A TREATISE OF THE Principall Grounds AND Maximes of the LAVVES OF THE KINGDOME.

Very usefull and commodious for all Students, and such others as desire the Knowledge, and Understanding of the LAVVES.

Lex plus laudatur, quando ratione probatur.

Written by that most Excellent, and Learned Expositor of the Law, *W.N.* of *Lincolns-Inne*, Esquire.

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A

TREATISE

OF THE

Principall Grounds

THE MATTERS CONTAINED, AND Handled in this ensuing Treatise are chiefly as followeth.

VIZ.

A Summary Consideration of the whole *Law*, di-

divided into the Lawes

Of { Reason / Custome / and / Statutes.

2 What things these Lawes doe chiefely concerne, As mens Possessions of Chattels, and of Lands, wherein some have Fee simple, some Fee tayle, some Estate for Life, some for Yeares, some at Will, some have Remainders, some have Reversions; And the Remedies those men shall have against them that doe wrong them in those Estates.

our Posterity after our death, by our Will, our goods to our Executors, and our Lands to our Heires, or otherwise at our pleasure.

ftly, for that divers controversies doe often arise about the same, I have set downe how the same may quietly be ended by friends, and of witnesse, and of other things belonging to the same.

nd were gathered, some at the Barre, and some out of divers learned writers, and Expositors of the Law.

hese Grounds, and Maximes

of the Law, being Origin
written in *French*, are then
very elegant, and ſententio
But now by their Tranſla
on in our Vulgar tongue, l
ſome of their grace and be
ty, a thing incident unto
Tranſlations, which if it ca
not be avoyded, it is the
fore to be the rather tole
ted, becauſe they are very pr
fitable for thoſe that d
not underſtand the *Fren*
tongue.

CHAP. I.

The Lawes of England *are threefold; Common Lawes, Customes, and Statutes.*

The Common-Law.

THE Common Law is grounded on the Rules of reason, and therefore we use to say in Argument, That reason Will that such a thing be done, or the reason will not that such a thing be done; The rules of reason are of two sorts some taken from Learning, as well Divine as Humane, and some proper to it selfe onely.

Of Thoelogie.

1.

Summa ratio est, quæ pro Religione facit.

A Tenure to find a Preacher, if the Lord purchase parcell of the Land, yet the whole service remaineth, because it is for the advancement of Religion.

2.

Dies dominicus non est Iuridicus.

Sale on a Sunday shall not be said Sale in Market, to alter the property of the Goods.

Of Grammar.

OF Grammar, the rules are infinite in the Etymologie of a Word, and in the construction thereof, what is nature, is single.

3.

Ad proximum antecedens, fiat relatio nisi impediatur Sententia.

As an inditement against *I. S.* servant to *I D.* in the Countie of *Middlesex* Butcher, & is not good, for servant is no Addition, and Butcher shall be referred to *I.D.* which is the next Antecedent.

Of Logick.

4.

Cessante causa, cessant effectus.

THe Executor, nor the husband, after the death of a woman Guardian in soccage shall not have the Wardship, because (*viz.*) the naturall affection is removed which was the cause thereof.

So

Some things ſhall be conſtrued according to the originall cauſe thereof.

5.

The Executor may releaſe before the probate of the Will, becauſe his title and intereſt is by the Will, and not by the Probate.

To make a man ſweare to bring me money upon paine of killing, and hee bringeth it accordingly, it is felony.

Outlawry in Treſpaſſe is no forfeiture of Land, as Outlawry in felony is, for although the non-appearance is the cauſe of the Outlawry in both, yet the force of the Outlawry ſhall be eſteemed according to the heynouſneſſe of the offence, which is the principall cauſe of the Proceſſe.

6.

According to the beginning thereof:
as if a

Servant, which is out of his Maſters ſervice, kill his Maſter, through the malice which he bare him when he was his ſervant, this is petty Treaſon.

7.

According to the end thereof;
as if a

Man warned to anſwer to a matter in a Writ, there he ſhall not anſwer to any other

matter then is conteined in the Writ; for that was the end of his comming.

8.

Derivativa poteſtas non poteſt eſſe majus primativa.

A Servant ſhall bee ſtopped to ſay the Franck-Tenement is belonging to his Maſter, by a recovery againſt his Maſter, although the ſervant bee a ſtranger to the Recovery, for hee ſhall not bee in better caſe then he is in, whoſe Right he claimeth, or juſtifieth.

9.

Quod ad initio non valet, in tractu temporis non convaleſcit.

If an Infant, or a married woman, doe make a Will, and publiſh the ſame, and afterwards dyeth, being of full age, or ſole, notwithſtanding this Will is void.

10.

Vnumquodque diſſolvitur eo modo quo Colligatur.

An Obligation or other matter in writing may not be diſcharged by an agreement by word, but by writing.

11. *He*

11.

Hee that claimeth a thing on high, ſhall neither have gaine, nor loſſe thereby.

As if one Ioynt-Tenant make a Leaſe of his Ioyntee, reſerving rent, and dye; the heire which ſurviveth ſhall have the reverſion of his Ioyntee, but not the Rent, becauſe hee commeth in by the firſt Feofor, and not under his companion.

Alſo where the husband being leaſed for yeeres in right, reſerving a Rent, the woman ſhall have the reſidue of the terme, but not the rent.

12.

Debile fundamentum, fallit opus.

When the eſtate whereunto the Warrantie is annexed is defeated, the Warranty is alſo defeated.

13.

Incidents may not be ſevered.

As if a man grant Wood to bee burnt in ſuch a houſe, wood may not bee granted away, but he which hath the houſe, ſhall have the wood alſo.

14.

Actio personalis moritur cum persona.

As if battery be done to a man, if hee that did the battery, or the other die, the Action is gone.

If the Leasor covenant to pay quit-rents, during the terme, his Executor shall not pay it, for it is a personall covenant.

15.

Things of higher nature, doe determine things of lower nature.

As matters of writing doe determine an agreement by words.

If an offence, which is murder at the Common law, be made high Treason, no appeale lyeth for it, for that the Murder is drowned, and punishable as Treason, whereof no appeale lyeth.

16.

Majus continet minus.

Whereby the Custome of a Manor, a man may demise for life, hee may demise to his wife, *durante viduitate.*

17. *Ma*

17.

Majus dignum trahit ſe minus dignum.

As the Writings, the Cheſt or Box they are in.

Of Philosophy.

18.

Natura vis maxima.

NAturall affection or brotherly love, are good cauſes or conſiderations to raiſe an uſe.

And one brother may maintaine a ſuite for another.

19.

The law favoureth ſome perſons:

Viz.

Men out of the Realme, or in Priſon, Women married, Infants, Ideots, Mad-men, Men without intelligence, Strangers, that are neither parties, nor privie, and things done in anothers right.

A diſcent ſhall not take away the entry of a man out of the Realme, or in priſon, or of a married woman, or of an infant.

And a leaſe made to the husband and wife, after the death of the husband, the wife ſhall not be charged for Waſte, during the marriage.

An Ideot ſhall not bee compelled to plead by his Guardian or next friend, but ſhall be in the Court, and he that pleadeth the beſt plea for himſelfe, ſhall be admitted.

If a dumb man bring an action, hee ſhall plead by his next friend.

If a Leſſee for yeares grant a Rent-charge, and ſurrendreth; the rent ſhall be paid, during the terme, to the Stranger.

A man Outlawed or Excommunicated, may bring an Action as an Executor.

20.

And a mans perſon, before his poſſeſſions.

Mentioned of corporall paine ſhall avoid a Deed, but not his Goods.

21.

And matter of poſſeſſion more then matter of right, when the right is equall.

As if a man purchaſe ſeverall lands at one time, held of ſeverall Lords by Knights ſervice, and dyeth, the Lord which firſt ſeizeth the Ward, ſhall have it, otherwiſe his elder Lord.

22. *Mat-*

22.

Matter of profit or intereſt ſhall bee taken largely: and it may be aſſigned, and it may not be countermanded but matter of pleaſure, truſt or authority ſhall be taken Strictly, and may be countermanded.

As Licence to him in my Parke, or in my Garden to walke, extendeth onely to himſelfe, and not to his ſervant, nor any other in his companie, for it is matter of pleaſure only; otherwiſe it is of a Licence to hunt, kill, and carry away the Deere, which is matter of profit.

A Church-way is matter of eaſe.

Of Politica Li.

23.

NOthing ſhall be void, which by poſſibilitie may be good; If Land be given to a man, and to a Woman, married to another man, and the heires of their two bodies, this is a preſent eſtate Tayle, becauſe of the poſſibilitie.

24.

Ex nudo pacto non Oritur actio.

No man is bound to his promiſe, nor any uſe

uſe can be raiſed without good conſideration.

A conſideration muſt bee ſome cauſe or occaſion, which muſt amount to a Recompence in Deed, or in Law, as money, or naturall affection, not long acquaintance, nor great familiarity.

25.

The Law favoureth a thing that is of neceſſitie.

As to pay ſeverall expences, ſhall not bee ſaid to Adminiſter; to diſtraine in the night, dammage feaſant, to kill another to ſave his owne life.

A ſervant to beate another to ſave his Maſter, if he cannot otherwiſe chooſe.

To drive another mans cattell amongſt mine owne, untill I come to a place to ſhift them, is not Treſpaſſe.

26.

And for the goods of the Common-wealth.

As killing of Foxes, and the pulling downe of an houſe, of neceſſitie to ſtay a fire.

27.

Communis error facit jus.

As an Acquittance made by a Major alone, where

where there be a hundred Preſidents is good.

28.

And things that are in the Cuſtody of the law.

Goods taken by Diſtreſſe, ſhall not bee taken in Execution for the debt of the owner thereof.

29.

The Husband and the Wife are one perſon.

They cannot ſue one another, nor make any grant one to another : And if a woman marry with her Obligor, the debt is extinct; and ſhe ſhall never have any action, if another were bound with him; for by the marriage the Action is ſuſpended, and an action perſonall ſuſpended againſt one, is a diſcharge to all.

30.

An Obligation with a condition to enfeoffe a woman before ſuch a day, and before the day, the Obligor taketh her to wife, the obligation is forfeited, becauſe hee cannot infeoffe her, but he may make a leaſe for yeares, with a remainder to his wife.

When a joynt Purchaſe is, during the marriage, every one ſhall have the whole.

When a joynt Purchaſe, during the marri-

age,

age, is made, and the husband ſell; the wife ſhall have a *Cui in vitâ*, for the whole againſt both, and on a feoffment made to one man and his wife, and to a third perſon, the third perſon ſhall have one moity.

31.

All that a Woman hath, appertaineth to her husband.

Perſonall things, and things abſolutely reall, as Lands, rents, and ſo forth, or Chattells reall, and things in Action, are onely in her right; notwithſtanding reall things, and things in Action, he may diſpoſe at his pleaſure, but not Will or charge them; and hee ſhall have her reall Chattells, if he ſurvive Of things in Action, the woman may diſpoſe by her laſt Will, and ſhe may make her husband her Executor, and he ſhall recover them to the uſe of the laſt will of his wife.

If a Leſſee for yeares grant his terme to a man, or woman, and to another, they are joynt-Tenants; But if goods be given to her and to another, her husband and the other, are Tenants in common.

The Husband may releaſe an Obligation, or treſpaſſe for goods taken when his wife was ſole, and it ſhall be good againſt the woman if he die; but if he die without making any

any ſuch Releaſe, the woman ſhall have the Action, and not the Executor of her huſband.

The woman ſurviving, ſhall have all things in Action, or her Executors, if ſhe die.

The Husband ſhall bee charged with the debts of his wife but during her life.

32.

The Will of the wife, is ſubject to the Will of her husband.

Note a Feoffment made to the wife, ſhee ſhall have nothing, if her husband doe not thereunto agree.

Morall Rules.

33.

THe Law favoureth workes of Charitie, right, and truth, and abhorreth fraud, coven, and incertainties. which obſcure the truth; contrarieties, delayes, unneceſſarie circumſtances, and ſuch like.

34.

Dolus & fraus una in parte ſanari debet.

No man ſhall take benefit of his owne wrong; if a man be bound to appeare at a day;

day, and before the day the Obligees caſt him in priſon, the bond is void.

A Grantee, of all his woods in B. Acre, which may be reaſonably ſpared, is a voide grant, if it be not reſerved to a third perſon, to appoint what may be ſpared.

A Feoffment made in Fee of two Acres to two men, *Habend.* on acre to one, and the other acre to the other; this *Habend.* is void.

35.

Lex neminem cogit ad impoſſibilia, &c.

The Law compelleth no man to ſhew that which by intendment he doth not know, as if a ſervant be bound to ſerve his Maſter in all his commandements lawfull, it is a good Plea, to ſay, he ſerved him lawfully.

A Covenant to make a new Leaſe upon the Surrender of the old Leaſe, and after the Covenants, doth make a Leaſe by Fine, for more yeares to eſtrange, the Covenant is broken, although the Leſſee did not ſurrender, the which by the words ought to be the firſt Act, for that the other had diſabled to take, or to make.

LAW CONSTRVCTIONS.

THe Law expoundeth things with equitie and moderation: To moderate the ſtrictneſſe; it is no Treſpaſſe to beat his Apprentice with a reaſonable correction, or to goe with a woman to a Iuſtice of Peace, to have the peace of her husband, againſt the will of her husband, which equitie doth reſtraine the generality, if there be any miſchiefe or inconvenience in it; As if a man make a feoffment of his lands in, and with Common, in all his Lands in *C.* the common ſhall bee intended within his Lands in *C.* and not in his other Lands he ſhall have elſe-where.

36

Every Act ſhall be taken moſt ſtrictly againſt him that made it.

As if two Tenants in Common, grant a Rent of 10. ſhillings, this is ſeverall, and the Grantees ſhall have 20. ſhillings: but if they make a Leaſe, and reſerve 10. ſhillings, they ſhall have onely 10. ſhillings between them.

So an Obligation to pay 10. ſhillings at the feaſt of our Lord God; It is no Plea to ſay that he did pay it; but he muſt ſhow at what time,

time, or elſe it will be taken, he paid it after the feaſt.

37.

Hee that cannot have the effect of a thing, ſhall have the thing it ſelfe.

Vt res magis valeat quam pereat.

As if a Termor grant his Terme, *Habendum immediatè poſt mortem ſuam*, the Grantee ſhall have it preſently.

38.

When many joyne in one Act, the Law ſaith, it is the Act of him that could beſt doe it, and that things ſhould be done by thoſe of beſt skill.

As the Diſeizee, and the heire of the Diſſeizor, who is in by diſcent, joyne in a Feoffment; This ſhall bee the Feoffment of the heire onely, and the confirmation of the Diſſeizee.

And the Merchant ſhall way the Wares, and not the Collectors.

39.

When two titles concurre, the elder ſhall bee preferred.

40. *By*

40.

By an acquittance for the laſt payment, all other Arrerages are diſcharged.

41.

One thing ſhall enure for another.

If the Leaſor enfeoffe the Leſſee for life, it ſhall be taken for a confirmation.

42.

In one thing, all things following ſhall be concluded, in granting, demanding, or prohibiting.

If one except a Cloſe, or a Wood, the Law will give him a way to it.

43.

A man cannot qualifie his owne Act.

As to releaſe an Obligation untill ſuch a time.

44.

The conſtruction of the Law may be altered by the ſpeciall agreement of the parties.

If a houſe be blowne downe by the wind, the Leſſee is excuſed in waſte; but if he have

covenanted to repaire it, there an Action of Covenant doth lie by the agreements of the parties.

45.

The Law regardeth the intent of the parties, and will imply their words thereunto; and that which is taken by common intendment, shall be taken to the intent of the parties; and common intendment is not such an intendment as doth stand indifferent, but such an intent as hath the most vehement presumption. All incertaintie may be knowne by circumstances, every deed being done to some purpose, reason would that it should be construed to some purpose, and variance shall be taken most beneficiall for him to whom it is made, and at his election.

46.

An intendment of the parties shall bee ordered according to the Law.

If a man make a Lease to a man, and to his heires, for ten yeares, intending his heires shall have it, if he die, notwithstanding the intent, the Executors shall have it.

47. Qui

47.

Qui per alium facit, per se ipsum facere videtur.

A promise made to the Wife in consideration of a thing to bee performed by her Husband, if he agree, and performe the Consideration; in an Action of the case, he shall declare the assumption was made to him.

And if my servant sell my goods to another, in debt I shall suppose, he bought them of me.

CVSTOMES.

Consuetudo est altera lex.

CVstomes are of two sorts; Generall Customes in use throughout the whole Realme, called Maximes, and particular Customes used in some certaine County, Citie, Towne, or Lordship, whereof some have beene specified before, and some follow here, and where occasion is offered.

GENERALL CVSTOMES.

THe Kings Excellencie is so high in the Law, that no Freehold may bee given

to him; nor derived from him, but by matter of Record.

Every Maxime is a ſufficient authoritie to himſelfe, and which is a Maxine, and which is not, ſhall alwayes bee determined by the Iudges, becauſe they are knowne to none but to the learned.

A Maxime ſhall be taken ſtrict.

A particular Cuſtome, except the ſame be a Record in ſome Court, ſhall be pleaded, and tryed by 12. men.

CHAP. II.

Statutes.

THe laſt ground of the Lawes of *England* ſtandeth in divers Statutes made by our Soveraigne Lord the King, and his Progenitors, and by the Lords Spirituall, and Temporall, and the Commons in divers Parliaments, in ſuch caſes, where the former Lawes ſeemed not ſufficient to puniſh evill men, and to reward the good.

Of Generall Statutes, the Iudges will take notice

notice if they be not pleaded, but not of ſpeciall, or particular.

All Acts of Parliaments, as well private as generall, ſhall be taken by reaſonable conſtruction be collected out of the words of the Act only, according to the true intention and meaning of the maker.

Foure leſſons to be obſerved, where contrary Lawes come in queſtion.

1. *The inferiour law muſt give place to the ſuperiour.*
2. *The law Generall muſt yeeld to the Law ſpeciall.*
3. *Mans lawes to Gods Lawes.*
4. *An old law to a new law.*

And oftentimes all theſe lawes muſt bee joyned together ro helpe a man to his right, as if a man be diſſeized, and the diſſeizor made a Feoffment to defraud the plaintiffe in this caſe, it appeares that the ſaid unlawfull entrie is prohibited by the law of Reaſon.

But the Plaintiffe ſhall recover double dammage; and that is by the Statute of

8. *Hen.* 6. And that the dammage ſhall bee ſeſſed by 12. men, that is, by the cuſtome of the Realme, and ſo in ſome caſe, theſe three lawes doe maintaine the Plaintiffes right.

And theſe lawes concerne either mens poſſeſſions, or the puniſhment of offences.

And ſo much ſhall be ſufficient to bee ſaid touching Common law, Cuſtomes, and Statutes.

CONCERNING POSSESSIONS.

THe differences betweene Poſſeſſion and Seizin is;

Leaſe for yeares is poſſeſſed, and yet the Leſſor is ſtill ſeized; and therefore the termes of the law are, that of Chattels a man is poſſeſſed; whereas in Feoffments, gifts in tayle, and Leaſes for life, he is called ſeized.

CHAP.

CHAP. III.

Of poſſeſſion of Frank-Tenement.

TEnant in Fee-ſimple, is hee which hath Lands, or Tenements to hold to him, and his heires for ever. It is the beſt Inheritance a man may have; He may ſell or grant, or make his Will of thoſe Lands.

And if a man die, they doe diſcend to his heire of the whole blood.

CHAP. IV.

Fee-Tayle.

Fee-Tayle is, of what body hee ſhall come that ſhall inherit.

Tenant in Tayle, is ſaid to be in two manners;

Tenant in Tayle Generall, and Tenant in Tayle Speciall.

GEnerall Tayle is, where Lands or Tenements be given to a man, and his wife, and to the Heires of their two bodies, or to his Heires males, or to her Heires Females.

Tenant in Tayle, is not punishable for waste.

Tenant in Tayle cannot Will his Lands, nor bargaine, sell or grant, but for terme of his life, without a Fine, or Recovery.

If a man will purchase lands in Fee, it behoveth him to have these words, Heires, in his purchase.

If a man would grant Lands in Tayle, it behoveth him to appoint what body they shall come of.

Yet a devise of lands to a man and his heires males, is a good Intayle, and of lands to a man for ever, a good Fee-Simple.

How Lands shall discend.

Inheritance is an estate which doth discend,

ſcend, it may not lineally aſcend from the ſonne which purchaſeth in Fee, and dyeth, to his Father; But diſcendeth to his Vncle or Brother, and to his heires, which is the next of the whole blood, for the halfe blood ſhall not inherit: But the moſt worthy of blood, as of the blood of the Father before the Mother, of the elder Brother before the other, and borne within eſpouſall.

A diſcent ſhall be intended to the heire of him which was laſt actually ſeized; That the Siſter of the whole blood, where the elder Brother did enter after the death of his Father, and not his Broiher of the halfe blood, nor any other collatterall Coſen ſhall inherit; yet notwithſtanding ſuch a one is heire to a comthon Aunceſtor, in which Rule, every word is to bee obſerved, and ſo in every Maxime, if the Land, Rent, Advowſon, or ſuch like doe diſcend to the elder Sonne, and he die before any entry, or receit of the rent, or preſentment to the Church, the younger ſonne ſhall have and inherite; and the reaſon is, becauſe that all inheritances in poſſeſſion, hee which claimeth title thereunto as heire, ought to make himſelfe heire to him that was laſt actually ſeized.

Here the poſſeſſion of the Leſſee for yeares,

or

or of the Guardian, ſhall inveſt the actual poſſeſſion, and Franck-Tenement in the elder brother.

But he dying ſeized of a Reverſion, or a Remainder, or an eſtate for life, or intayle; There he which claimeth the Reverſion, or Remainder as heire, ought to make himſelfe heire to him that had the Gift, or made the purchaſe.

Feodo excludeth an eſtate tayle, where the ſecond ſonne ſhall inherite before the daughter.

And if the Lands bee once ſettled in the blood of the father, the heire of the mother ſhall never have them, becauſe they are not of the blood of him that was laſt ſeized.

And to the heire of the blood of the firſt Purchaſer;

As if the Father purchaſe Lands, and it diſcendeth to the ſonne, who entreth, and dieth without heires of the Fathers part, then the Lands ſhall diſcend to the heires of the mother or father of the father, and not to the heires of the mother of the ſonne, although they are more neere of blood to him that was laſt ſeized, yet they are not of the blood of the firſt Purchaſer.

If the heires be females in equall diſtance,

as

as Daughters, Sisters, Aunts, and so forth, they shall inherit together, and are but one heire, and are called Parceners.

Gavill-kinde.

Doth discend to all the sonnes, and if no sons, to all the daughters: And may be given by Will by the Custome.

CHAH. V.

PARCENERS.

Parceners are of two sorts:

Viz.

Women, and their heires by the Common law.
Men, by the Custome.

THey may have a Writ of Partition, and the Sheriffe may goe to the Lands, and by the oath of 12. men, make Partition betweene them, and the eldest shall have the Capitall Messuage by the Common Law, and the youngest by the Custome; Where

Where the parties will not ſhew to the Iury the certaintie, there they ſhall be diſcharged in conſcience, if they make Partition of ſo much as is preſumed and knowne by preſumptions and likelyhoods.

Parceners may by agreement make partition by Deed, or or by Word, and the eldeſt firſt chooſe, unleſſe their agreement bee to the contrary.

Every part at the time of the partition muſt be of an even yeerely value, without incumbrance.

Rent may be reſerved for equality of Partition (and may be diſtrained for) without a Deed.

Parceners by divers diſcents, before partition, being diſſeized, ſhall have one aſſize.

A Parcener before partition, may charge, or demiſe her part.

The entrie or Act of one Copartner, or joynt-Tenant ſhall be the Act of both ; when it is for their good.

If a Parcener after Partition be entred, ſhe may enter upon her Siſters part, and hold it with her in Parcenary, and have a new Partition, if ſhe hold none of her part before ſhe was outed, viz. in Exchange.

CHAP.

CHAP. VI.

IOYNT-TENANTS.

IOynt-Tenants bee ſuch as have joynt eſtates in goods, or lands, where he that ſurviveth ſhall have all without incumbrance, if the Tenements abide in the ſame plight as they were granted.

Ioynt-Tenants may have ſeverall eſtates;

A Ioynt-Tenant cannot grant a Rent-charge, but for terme of his owne life.

A joynt-Tenant may make a Leaſe for life, or for yeares, of his part, or Releaſe, and the Leſſee for yeares may enter, although the Leſſor die before the Leaſe begin, and his heire ſhall have the Rent, but Survivor the Reverſion.

A Ioynt-tenant may have a Writ of Partition by the Statute of the 32. of *H.8 cap.* 32. A Partition made by Ioynt-Tenants, or Tenants in Common of Eſtates of Inheritance, muſt be by Indenture, by Word its voide.

CHAP.

CHAP. VII.

Tenants in Common.

Tenants in Common, are those that hold Lands and Tenements by severall titles.

They may joyne in action personall, but they must have severall actions Reall.

They may have a Writ of Partition by the Stat. of 31. H. 8. cap. 32.

IF one Parcener, Joynt-Tenant, or Tenant in Common take, all the other have no Remedie, but by *Ejectione firme*, or such like, or Waste.

Gavill-kind Lands.

Tenant by the curtesie of *Kent*, whether he have Issue or no, untill he marry, and so forth, he may not commit Waste.

CHAP.

CHAP. VIII.

TENANT in DOWER.

A Woman ſhall be indowed of all ſorts of inheritance of her husband, where the Iſſue that ſhe had by him may inherit, as heire to his father, by meetes, and bounds of a third part.

She ſhall have houſe-roome, and meat, and drinke in Common, for forty dayes; But ſhe may not kill a Bullock within thoſe 40. dayes after the death of her husband, in which time her Dower ought to be aſſigned her.

The Aſſignement by him that had the Franck-Tenement is good, but by him that is Guardian in Soccage, or Tenant by *Elegit*, *verte Elegit*, or Statutes, or Leſſee for yeares, is not.

She is to demand her Dower on the Land.

She ſhall recover damages when her huſband dyed ſeized, from the death of her huſband; if the heire be not ready at the firſt day to aſſigne her Dower.

She

She ſhall have all her Chattels reall againe, except her Husband ſell them, hee may not charge them, or give them by his Will, and likewiſe her bonds, if the money were due in the life of her husband, and all convenient apparell; but if ſhe have more then is fit for her degree, it will be aſſets.

A woman ſhall be barred of her Dower ſo long as ſhe deteineth the body of the heire, being Ward, or the Writings of the ſonnes Land;

A woman ſhall not bee endowed of any lands that her husband joyntly holdeth with another, at the time of his death.

Dower of Gavill-kind lands.

If the woman ſhall be endowed of one halfe ſo long as ſhe is unmarried, and chaſte, and it may be held with the heire in Common.

It is of Lands and Tenements, and not of a Faire or ſuch like; where the Heire loſeth not his inheritance, there ſhee loſeth not her Dower.

Ioynture.

IF a Woman have a Ioynture before marriage, ſhee may claime no Dower, 27. *Hen.* 8.

If it be made during marriage, ſhe may enter

ter into her Joynture presently.

If she enter, or accept of it, she shall not be endowed.

If she shall be expulsed of any part of her Joynture, she shall be endowed of the residue of her Husbands Lands.

CHAP. IX.

Tenant for terme of life.

TEnant for terme of life, is hee that hath Lands or Tenements for terme of his life, or another mans life, and none of lesser estate may have a Free-hold.

If a Tenant for life sowe the Lands, and die before the corne be reaped; his Executor shall have it, but not the Grasse, nor other fruit.

If a Tenant for life bee impannelled upon an Inquest, and forfeit Issues and die, they shall be levied upon him in the Reversion, and so likewise, if the Husband on the Lands of the Wife.

CHAP. X.

Tenant for Terme of yeares.

Tenant for terme of yeares, is where a man letteth lands or tenements to another for certaine yeares.

HEE may enter when he will, the death of the Lessor is no let, and may grant away his Terme before it begin, but before he enter, he cannot Surrender, nor have any action of trespasse, nor take a release.

He is bound to repaire the Tenements.

The Lessor may enter to see what Reparations or Waste there is, and he may distraine for his rent, or have an action of debt.

If Tenant for life or yeares granteth a greater estate then he hath himselfe, he doth forfeit his terme.

CHAP. XI.

Tenant at Will.

Tenant at Will, is hee that holdeth lands, or tenements at the Will of another.

THe Leſſor may reſerve a yearely rent, and may diſtraine for it, or have an Action of debt; the Leſſee is not bound to repaire the Tenements.

The Will is determined by the death of the Leſſor, or of a woman Leſſee, by her marriage, or when the Leſſee will take upon him to doe that which none but the Leſſor may doe lawfully, it determineth the Will and Poſſeſſion, and the Leſſor may have an action of Treſpaſſe for it.

The Leſſee ſhall have reaſonable time to have away his goods, and his corne; but he ſhall loſe his Fallow, and his dung carried forth.

CHAP. XII.

REMAINDER.

A Remainder is the reſidue of an eſtate at the ſame time appointed over, and muſt be grounded upon ſome particular eſtate given before; granted for years, or for life, and ſo forth.

And ought to begin in poſſeſſion, when the particular eſtate endeth, there may bee no mean time between; either by Grant, or Will.

No remainder can be of a Chattell perſonall; a Remainder cannot depend on a matter, *ex poſt facto*, as upon Eſtate tayle, upon condition, That if the Tenant in Tayle ſell, then the Land to remaine to another, is a void Remainder.

CHAP. XIII.

REVERSION.

A Reverſion is the reſidue of an eſtate, that is left after ſome particular eſtate, granted out in the Grantor, as if a man grant Lands for life, without further granting; the Reverſion of the Fee-ſimple is in the Leſſor.

CHAP. XIV.

WASTE.

WASTE lyeth againſt a Tenant by the curteſie, for life, for yeares, or in Dower, and they ſhall loſe the place waſted, and treble dammages.

Waſte lyeth not againſt a Tenant by *Elegit*, Statute-Merchant, or Staple; But account after the debt or dammage levied.

Waſte, nor account will lie againſt a Tenant in Mortgage, becauſe he had Fee conditionall.

Waſte is not given to the heire for Waſte in the life of his Father.

Waſte is given againſt the Aſſignee of the Tenant for life, or of anothers life, but not againſt the Aſſignee of a Tenant in Dower, or of the curteſie, it is to bee brought againſt themſelves.

It is Waſte to pull up the fourmes, benches, doores, windowes, walls, Filbert-trees, or Willowes planted.

CHAP. XV.

DISCONTINUANCE.

DISCONTINVANCE is where a man that hath the preſent poſſeſſion, by making a larger eſtate then hee may, diveſteth the inheritance of the Lands or Tenements out of another, and dyeth, and the other hath right to have them, but he may not enter, becauſe of ſuch alienation, but is put to his Writ.

If a man ſeized in the right of his Wife, or if a Tenant in Tayle made a Feoffment, and dyed, the Wife might not enter, nor the *Iſſue* in Tayle, nor he in Reverſion, but are put to their action.

Now the Wife may enter by the Statute, 32. *H.* 8. and a recovery ſuffered by the Tenant by Curteſie, or by the Tenant after poſſibility of Iſſue extinct, or for terme of life, is now made no diſcontinuance.

Such things that paſſe by w^a^y of a grant, by deed without livery, and ſeiz^i^n, cannot bee diſcontinued as a reverſion, or Rent-charge, Common, &c.

A Releaſe, or confirmation without Warranty, maketh no diſcontinuance.

CHAP. XVI.

DISCENTS.

DIſcents which take away entries, is where a man diſſeizeth another, and dyeth, and his heire entreth, or maketh a Feoffment to another in Fee, or in tayle, and he dyeth, and his heire entreth; theſe diſcents put a man from his entrie.

A diſcent without a diſſeizin, doth not take away an entry, nor a diſſeizin without a diſcent.

A diſcent, during minority, marriage, *non ſanæ mentis*, impriſonment, or being out of the Realme, doe not take away an entry.

Diſcents of Rents in groſſe, the Lord notwithſtanding may diſtraine.

A dying Seized of a terme for life, or of a Remainder, or Reverſion, doth not take away an Entrie, he muſt die ſeized in Fee; and Frank-Tenement.

A diſeizin cannot bee to one joynt-Tenant or Parcener alone, if it be not to the other.

If a condition be broken after a diſcent, the Donor Feoffor, or his heires may enter.

A wrongfull diſeizin is no diſcent, unleſſe the diſeiſor have quiet poſſeſſion five yeares without entrie, or claime, 32. *H.* 8.

CHAP. XVII.

Continuall Claime.

COntinuall Claim is a demand made by another of the propertie or poſſeſſion of a thing which hee hath not in poſſeſſion, but is withholden from him wrongfully; defeateth a diſcent, hapning within a yeare and a day after it is made, & now by the ſtatute within five years.

CHAP. XVIII.

Remitter.

REmitter is, when by a new title, the Franck-Tenement is caſt upon a man, whoſe entrie was taken away by a diſcent, or diſcontinuance, hee ſhall be in by the

the elder title; as if Tenant in tayle diſcontinue the tayle, and after diſeizeth his diſcontinuance, and dieth thereof ſeized, and the land diſcend to his Iſſue, in that caſe hee is ſaid to be in his Remitter, *viz.* ſeized his Ancient Eſtate tayle.

When the entrie of a man is lawfull, and he taketh an eſtate to himſelfe, when he is of full age, if it be not by Deed indented, or matter of record which ſhall eſtop him, it ſhall be to him a good Remitter.

A Remitter to the Tenant ſhall be a Remitter to him in the Remainder, and reverſion.

CHAP. XIX.

TENURES.

ALL lands are holden of the King immediately, or of ſome other perſon, and therefore when any that hath Fee, dyeth without heire, the Lands ſhall eſcheate to the Lord.

And they are holden for the moſt part either by Knights ſervice, or in Soccage.

Knights Service draweth to it Wards, Marriage, and Reliefe; *Viz.*

Of

Of Ward, Marriage and Reliefe.

THe Heire male unmarried, ſhall bee in Ward untill 21. yeares of age.

If hee be married in the life of his Anceſtors, yet the Lord ſhall have the profit of the land till his full age,

None ſhall be in Ward during the life of the Father.

If the heire refuſe a convenient marriage, he ſhall pay to the Lord the value, when he commeth to full age.

If the Ward marry againſt the will of the Guardian, he ſhall pay him the double valew of his Marriage, but if the heire bee of the full age aforeſaid, he ſhall pay a reliefe.

A reliefe for a whole Knights Fee, is 5l. for halfe a Knights Fee 50s. for a quarter 25s. for more, more; for leſſe, leſſe, accordingly.

A Reliefe is no ſervice, but is incident to a Service, the Guardian muſt not commit Waſte, *viz.* Chattels.

Tenure in Soccage.

TEnure in Soccage is, where the Tenant holdeth of his Lord by fealty, ſuite of Court

Court, and certaine rent for all manner of Service.

The Lord ſhall not have the Wardſhip, but a reliefe preſently after the death of his Tenant.

A Reliefe for Soccage land, is a yeares rent, and is to be paid preſently upon a diſcent or purchaſe. As if the Land were held by Fealty, and 10ˢ. Rent, *per annum*; 10ˢ. ſhall be paid for Reliefe.

The next of the kin to whom the inheritance may not diſcend, ſhall have the Wardſhip of the Land, and of the heire, untill his age of 14. yeares, to the uſe of the heire, at which age, the heire may call him to account.

If the Guardian die, the heire cannot have an Action of account againſt the Executor of the Guardian.

The Executor of the Guardian may not have the Wardſhip, but ſome other of the next of kin, the Husband may not alien the intereſt of the Wife, in the Guardianſhip, nor hold it; if ſhe die, it may not be ſold.

If another man occupie the Lands of the heire, as warden in Soccage, the heire may call him to account, as Guardian.

If the Guardian hold the Lands, after the heire is 14. the heire ſhall call him to account, as his Bailiffe.

Gavill-

Gavill-kinde.

THe next of kin ſhall have the Guardianſhip of the body, and lands untill the heire be 15. yeares of age.

Diverſities of ages.

A man hath but two ages.

The full age of Male and Female is, One and twenty.

A Woman hath ſixe ages.

THe Lord her father may diſtraine for ayd for her marriage, when ſhe is ſeven. She is double at Nine.

She is able to aſſent to Matrimony at Twelve.

She ſhall not be in Ward, if ſhe be fourteene.

She ſhall goe out of Ward at Sixteene.

She may ſell, or give her lands at 21.

No man may be ſworne in any Iury, before he be 21. before which age, all gifts, grants, or deeds as doe not effect by delivery of his owne hands, are void, and all others voidable, except for neceſſary meat, drinke, and apparell, *&c.*

An Infant may doe any thing for his owne advantage, as to be Executor, or ſuch like; an Infant ſhall ſue by his next friend, and anſwer by his Guardian.

Gavill-

Gavill-kind.

The heire may give, or ſell at fifteene yeares of age.

1. *The land muſt diſcend, not be given him by Will.*
2. *He muſt have full recompence.*
3. *It muſt be by Feoffment, and livery of ſeizin with his owne hands, not by warrant of Attorney, nor any other conveyance.*

BY the Civill Law, an Infant may be Executor at 17. yeares of age.

An Infant may make a Will of his goods, at 14 yeares of age, and a Maid at 12.

CHAP. XXI.

RENTS.

There are three manner of RENTS.

Rent-Service.
Rent-Charge.
Rent-Seck.

RENT-SERVICE is, where a man holdeth his lands of his Lord by certaine Rent, and ſo forth.

Rent-Charge is granted, or reſerved out of certaine Lands by Deed, with a clauſe of diſtreſſe.

Rent-

Rent-Seck, is a Rent granted without a diſtreſſe; or Rent ſervice, ſevered from other ſervice, becommeth a Rent-Secke.

The Reverſion of a Rent without a Deed, is void if the Reverſion bee not in the reſervor, if a Rent be granted from the Reverſion, it is a Rent Seck.

He which is not ſeized of a Rent-Seck, is without remedie for the ſame.

The Gift of a Peny by the Tenant, in name of ſeizin of a Rent-Seck, is a good poſſeſſion, and ſeizin.

No Rent may be reſerved upon any Feoffment, Gift, or Leaſe, but only to the Donor, and his heires, not to any ſtranger.

A Rent-charge is Extinct by the Grantees purchaſe of parcell of the land, but by the purchaſe of any of his Anceſtors, it ſhall not, it ſhall be apportioned like Rent-ſervice, according to the value of the land; but if the whole Land diſcend of the ſame inheritance, the rent is extinguiſhed.

By the grant of the Reverſion, the rents and Services paſſe: If Rent be granted to a man without more; ſaying, hee ſhall have it for terme of his life.

If the Lord accept of Rent or Service of the Feoffment, hee excludeth himſelfe of the

Arrerages

Arrerages of the time of the Feoffment.

For a Rent-charge behind, one may have an Action of annuity, or distraine.

Distresse.

For what, when, and where a man may distraine.

A man may distraine for a Rent-Charge, Rent-Service, Herriot-service, and all manner of Service, as

Homage.
Escuage.
Fealtie.
Suite of Court.
And Reliefe, &c.

HErriot custome must be seized: and for Amerciaments, in a Leete, upon whose ground soever it be in the libertie, A man may not distraine for Rent, after the Lease is ended, nor have debt upon a Lease for life, before the estate of Franck-Tenement bee determined.

A man may not distraine in the night, but for dammage Pheasant.

A man may not distraine upon the possessions of the King, but the King may distraine of any Lands of his Grantee; or Patentee.

A man may not distraine the beasts of a Stranger,

Stranger, that come by eſcape, untill they have been Levant, and Couchant on the ground, but for dammage Feſans.

A man may not diſtraine the Oxen of the Plough, nor a Mil-ſtone, nor ſuch like that is for the good of the Common-wealth, nor a Cloke in a Taylors ſhop, nor victuals, nor corne in ſheafes, but if it be in a Cart, for dammage Feaſans.

A diſtreſſe muſt be alwayes of ſuch things, as the Sheriffe may make a Replevin.

A man may not ſever horſes joyned together, or to a cart.

If a man put cattell into a paſture for a weeke, and afterwards *I. N.* doth give him notice, that he will keepe them no longer, and the owner will not fetch them away. *I. N.* may diſtraine them, dammage Feaſans.

If a man take beaſts, dammage Feaſant, and driving them by the high way to a pound, the beaſts enter into the houſe of the owner, and the taker prayeth the delivery of them, and the owner will not deliver them: a Writ of Reſcous lyeth.

If a man diſtraine goods, hee may put them where he will.

But if they periſh, he ſhall anſwer for them.

If cattell, they ought to bee put in a com-

mon

mon pound, or elſe in an open place, where the owner may lawfully come and feed them, and notice given to him thereof, and then if they die, it is in default of the owner.

Cattell taken damage Feſans, may bee impounded in the ſame land; But goods or Cattell taken for other things, may not.

Sheepe may not be diſtreined, if there be a ſufficient diſtreſſe beſides.

No man ſhall drive a diſtreſſe out of the County wherein it was taken.

No diſtreſſe ſhall bee driven forth of the hundred, but to a Pound Overt within three miles.

A diſtreſſe may not be impounded in ſeverall places, upon paine of five pounds, and treble damage.

Fees for impounding one whole Diſtreſſe, Foure pence.

The Executor or adminiſtrator of him which had Rent or Fee-Farme in Fee, in Fee-tayle, or for life, may have debt againſt the Tenant that ſhould pay it, or diſtraine: and this is by the Statute 32. *H.* 8.

So may the Husband after the death of his Wife, his Executor, or Adminiſtrator. So may hee which hath Rent for another mans life, diſtraine for the arrerages after his death, or have an action of Debt, 32. *H.* 8.

But if the Landlord will diſtrain the goods, or cattell of his Tenant, and doe ſell them, or worke them, or convert them to his own uſe, he ſhall be Executor of his owne wrong.

CHAP. XXIII.

Diſeizin of Rents.

Three cauſes of Diſeizin of Rents Service.

Reſcous.
Replevin.
Incloſure.

Foure of Rent-Charge, Denyer, and incloſure.
Foreſtalling is a Diſeizin of all.

FOreſtalling is, when the Tenant doth with force, and armes, way-lay, or threaten in ſuch manner, that the Lord dareth not diſtraine, or demand the Rent.

Denyall is, if there be no diſtreſſe on the Land, or if there be none ready to pay the Rent, *&c.*

And of ſuch diſeizins, a man may have an action of Novell diſeizin againſt the tenant, and Recover his Rent, and arrerages, and his dammage and coſts, and if the Rent be behind another time, hee ſhall have a Rediſſeizin,

tin, and recover double dammage.

Reſcous, and Pound-breach.

IF the Lord diſtraine when there is no rent nor ſervice behind, the Tenant may not reſcue, otherwiſe if another diſtreine wrongfully, but no man may breake the Pound, although he did tender amends before the cattell were impounded.

If the Lord come to diſtraine, and ſee the beaſts, and the ſervant drive them out of his fee, the Lord may not have Reſcous, becauſe he had not the Poſſeſſion, but he may follow them, and diſtraine, but not dammage feaſans.

CHAP. XXIV.

COMMON.

COMMON is the right that a man hath to put his beaſts to paſture, or to uſe, and occupy ground that is another mans.

There be divers Commons *viz.* Common in groſſe, Common appendant, Common appertinant, Common, becauſe of neighbourhood, *viz.* the termes of law.

The Lords of Waſtes, Woods and paſture may approve againſt their Tenants and neighbours with common appertenant, leaving them ſufficient Common, and paſture to their Tenants.

As if one Tenant, ſurcharge the Common; the other Tenants may have againſt him a Writ *de admenſuratione paſturæ*; But not againſt him that hath Cõmon for beaſts without number, neither may the Lord encloſe from ſuch Tenants: if he do, the Tenant may bring an aſſize againſt him, and recover Treble dammage, but the Lord may have a *quo jure*, and make the Tenant ſhew by what title he claimeth.

CHAP. XXV.
WAYES.

The Kings high-way is that which leadeth from village to village.

A common high way is that which leadeth from a village into the fields.

A private way is that which leadeth from one certaine place unto another, 3. Ed. 3.

IN the Kings high-way, the King hath onely paſſage for himſelfe and his people; and the Franck-tenement, and all the profits are in the Lord of the ſoyle, as they be preſented at the Leete.

Of

Of a Common high-way, the Franck-Tenement and profits are to him that hath the land next thereto adjoyning, and if it bee ſtopped, and I be damnified by it, I have no remedy, but by preſentment in the Leete.

If a private way be ſtraitned, or if a bridge there, which another ought to repaire, be decayed, an action of the caſe lyeth; But if the way be ſtopped, an Aſſize of Nuſance lyeth, and the Leſſee may have it after the Leſſors yeares begin, or the Leſſee may haue an Action of the caſe: if the moſt part of a Water, or way, be ſtopped, an Aſſize will lie.

CHAP. XXVI.

LIBERTIES.

A Libertie is, a royall priviledge in the hands of a ſubject.

ALL Liberties are derived from the Crown, and therefore are extinguiſhed if they come to the Crown againe by eſcheate, forfeiture, or ſuch like, for the Greater doth drowne the Leſſer.

One may have Park, a Leete Wayſe, ſtray, wreck of Sea, and *tenura placitorum*, by preſcription, and without allowance in Eyre.

But not Cognizance of plea, nor *Cattalla*

fellonum, vel fugitivorum, aut ut ligatorum.

A libertie may be forfeited by misusing, as to keep a market otherwise then it is granted.

A Libertie may be forfeited for not using, when it is for the good of the Commonwealth; As not to exercise the Office of the Clarke of the Market; but not to use a market, is not.

Whatsoever is in the King, by reason of his Prerogative, may not be granted, or pardoned by generall words, but by speciall.

CHAP. XXVII.

Of Chattells Reall.

Chattells Reall, are Guardianships, Leases for yeeres, or at Will, &c.

GVardianship is a Commodity of having the custodie of the body, or lands, or both, where the heire is within age, and the Lord of whom the Land is holden, by Knights service, shall have the same to his owne use, for it is a Chattell Reall, and therefore his Executor shall have it,

The

The Guardian must not doe waste, nor infeoffe, upon paine of losing the Wardship. But he must maintaine the buildings out of the Issues of the lands, and so restore it to the heire.

If the Committee of the King, commit, the Wardship shall be committed to another; if the Grantee, he shall lose the Wardship.

And one of the friends of the Ward, being his next friend that will, may sue for him.

If a Lease be made to a man, and his heires for 20. yeares, it is a Chattell, and his Executor shall have it; otherwise, if a man Will a Lease to a man and his heires, here the word Heires, are words of purchase, and his heires shall have it.

If a man grant, *Proximam ad vocationem*, to *I.S.* and his heires, it is but a Chattell, for it is but for *unicâ vice*.

Writings pawned for money lent, are Chattells.

If a woman have execution of Lands by Statute-Merchant, and taketh a husband, hee may grant it, for it is a chattell,

Of Chattells Personall.

CHattels Personall are gold, Silver, Plate, Iewells, utensils, beasts, and other chattell,

tell, and moveable goods whatsoever; Obligations, and Corne upon the ground.

All goods, as well moveable, as unmoveable, Corne upon the ground, Obligations, right of Actions, money out of bags, and corn out of sack, *Sunt Cattalla.*

Money is not to be passed by the grant of all his goods, and Chattels; nor Hawkes, nor Hounds, nor other things, *fere natura*, for the propertie is not in any, not after they are made tame, longer then they are in his Possession; as my Hounds following me, or my man, or my Hawke flying after a fowle, or my Deere haunting out of my Parke. But if they stray of their owne accord, it is lawfull for any man to take, and the heire shall have them.

All Chattells shall goe to the Executors; Fatts, and Furnaces fixed in a Brew-house, or Dy-house by the Lessee; If they bee fixed by Tenant in Fee, the heire shall have them.

Now something hath beene said concerning Possessions, it followeth, that it be shewed, how they may be conveyed from one man to another.

CHAP.

CHAP. XXVIII.
Of Conveyances.

In every Conveyance, there muſt be a Grantor, and a Grantee, and ſomething granted.
The Conveyance of ſome perſons is voide, of others voidable.

CONVEYANCE of a Woman Covert is voide, without the conſent of her Husband, and it ought to be made in her and his name, except it be done as Executor to another.

Of an Infant, that which doth not take effect with the delivery of his owne hands, is voide, and an Action of Treſpaſſe will lie againſt him, for taking the things given.

Otherwiſe it is but voidable, except it be as Executor, or for neceſſary meat, and drinke, *&c.* for his advantage.

Voidable. { Of *non ſane memorie*, / or made by *dureſſe*, } Royall.

VOydable by the partyes themſelves, and their heires, and by them that ſhall have their eſtates, except *Non ſane* himſelfe.

Grants by Fine.

VOydable by Writ of Error, by an Infant, during his nonage, and by the Husband for

for a Fine levied by his Wife alone, during their Marriage.

Conveyance of ſome perſons cannot bee good for ever, without the conſent of others, as the Deane without the Chapter; The Major without the Commonaltie, and of other bodies politick, that have a common Seale, or of a Parſon without the Patron and Ordinary.

If there be no condition in the Conveyance, it ſhall be intended the elder.

A Conveyance made to a feme Covert, ſhall be good, and of effect, untill her husband doe diſagree.

An Infant may be Grantee, ſo may a Woman Outlawed, a Villaine, a Baſtard, and a Fellon.

A Baſtard can have no heire, but the Iſſue of his body lawfully begotten

An Infant at the age of diſcretion, by his actuall entry; and a woman againſt the will of her husband may be a diſeiſor, or a Treſpaſſor.

In all conveyances, there muſt bee one named, which may take by force the grant, at the beginning of the grant.

A grant made to the right heires of one that is dead, is good, or *Cuſtodibus Eccle.* is good for goods.

All Chattells, reall or perſonall, may bee granted,

granted, or given without a Deed.

Rent-ſervice, Rent-Seck, Rent-charge, Common of Paſture, or of Turbarie, Reverſion, Remainder, advowſon, or other things, which lyeth not in manuall occupation, may not be conveyed for yeares, for life, in tayle, or in Fee, without writing.

The Major, or Commonalty, or ſuch like, cannot make a Leaſe for yeares, without a Deed.

CHAP. XXIX.

Of Deeds.

Three things needfull, and pertaining to every Deed, Writing, Sealing, and delivering.

IN the Writing muſt be ſhewed the perſons names, their dwelling place, and degree. The things granted, upon what conſideration, the eſtate, whether abſolute, or conditionall, with the other circumſtances, and the time when it was done.

No grant can be made, but to him that was partie to the Deed; except it be by way of Remainder.

The Words must bee sufficient in Law to bind the Parties; As if a man grant, *omnia terras certa sua*, a Lease for yeeres passeth not, but for Franck-Tenement, at least, *nec per omnia bona sua.*

Exceptio semper ultimo ponenda est.

THe *Habendum* must include the premisses.

A Condition cannot bee reserved, but by the Grantor, and it is proper to follow the *Habend.* presently.

The *Habendum*, or Condition must not be Repugnant to the Premisses, if it be, it is void, and the Deed will take effect by the Premisses.

A Warrant is good, although it extend not unto all the Lands, nor to all the Feoffees, or made by one of the Feoffors.

If it be rased, or interlined in the date, or in any materiall place, it is very suspitious.

Of Sealing.

A Writing cannot be said to be a Deed, if it be not sealed, although it bee written, and delivered, it is but an Escrowe.

And if it were sufficiently sealed, yet if the Print of the seale be utterly defaced the Deed is unsufficient; it is not my Deed.

It

It may not be pleaded, but it may be given in Evidence.

Of Delivery.

A Deed taketh effect by the delivery, and if the first take any effect, the second is voide.

A Jurie shall be charged, to enquire of the delivery, but not of the date, yet every Deed shall be intended to be made, when it doth beare date.

Diversitie in delivering of a WRITING.

As a Deed.
As Escrow.

THis Delivery ought to bee done by the partie himselfe, or by his sufficient Attourney, and so it shall binde him, whosoever wrote, or sealed the same.

If one be bound to make assurance, he need not to deliver it, unlesse there be one to read it to him before.

And if any writing bee read in any other forme to a man unlearned; It shall not be his Deed, although he Seale and deliver it.

There are two sorts of Deeds.

A Deed Poll, which is the Deed of the Grantor, a Deed indented, which is the

the mutuall Deed of either parties; but in Law, one is the Deed of the Grantor, and the other the counter-partie, and if any variance be in them, it ſhall bee taken as it is in the Deed of the Grantor; and if the Grantor Seale only, it is good.

CHAP. XXX.

BARGAINES and SALES.

NO Manor-lands, Tenements, or other hereditaments can paſſe, alter or change, from one man to another, whereby an eſtate of Inheritance or Free-hold is made, or taketh effect in any perſon or perſons, or any uſe thereof is made, by reaſon only of any Bargaine and Sale therefore, except the ſame be made by writing indented, ſealed, and inrolled in one of the Courts of Record at Weſtminſter, or within the ſame Court or Countie where the Tenements ſo bargained, doe lie, before the *Cuſtos Rotulorum*, and two Juſtices of Peace, and the Clerk of the Peace, or two of them, whereof the Clerke of the Peace to bee one, and that within ſixe moneths after the date of ſuch writing indented, 27. *H.* 8.

The

The inrollment ſhall bee intended the firſt day of the Terme, and ſhall have relation to the delivery of the Deed, againſt all ſtrangers.

CHAP. XXXI.

FEOFFMENTS.

A Feoffment, is an eſtate made by delivery of Poſſeſſion, and ſeizin by the party, or his ſufficient Attorney.

A man cannot make livery of ſeizin, before hee have the Poſſeſſion.

A Ioynt-Tenant cannot enfeoffe his Companion. A Co-partner make a feoffment of his part, or releaſe.

A man cannot enfeoffe his Wife.

A Diſeizor cannot enfeoffe the Diſeizee for his entrie is lawfull upon the diſeizor.

Such Perſons as have Poſſeſſion in lands for yeeres, or for life, &c. cannot take by livery and ſeizin of the ſame Lands.

IF a Feoffment be made, and the Leſſee for yeares give leave to the Leſſor to make Livery and ſeizin of the Premiſſes, ſaving to himſelfe his Leaſe, &c. and he doth; the terme is not

not ſurrendred, for the Leſſee had an Intereſt which could not be ſurrendered without his conſent to ſurrender, and here his intent to ſurrender doth not appeare; wherefore hee may enter, and have his terme, and the rent is renewed, but it is otherwiſe with a Leſſee for life, and the rent is extinct.

The Leſſor cannot make Livery and ſeizin againſt the Will of the Leſſee being on the Land; But he may grant the Reverſion, and if the Leſſee doe Attorne, the Free-hold will paſſe without Livery of ſeizin.

Livery of Seizin.

LIvery of ſeizin, is a Ceremonie uſed in Conveyance of Lands, that the Common people might know of the paſſing, or alteration of the eſtate: it is requiſite in all Feoffments, gifts in the tayle, and Leaſes for life, made by deed, or without deed.

No Free-hold will paſſe without Liverie of ſeizin, except by way of ſurrender, Partition, or exchange, or by matter of Record, or by Teſtament.

Livery of ſeizin muſt bee made in the lifetime of him that made the eſtate.

Dona clandestina sunt semper suspitiosa.

BY Livery of seizin in one County, the Lands in another County will not passe.

Livery within view, is good, if the Feoffee doe enter in the life time of the Feoffor.

Livery may not be made of an estate to begin in *Futuro*, for no estate in Franck-Tenement may be given in *Futuro*, but shall take effect presently, by Livery and Seizin.

Of Vses.

THe Statute of 27. *H.* 8. hath advanced uses, and hath established suretie for him that hath the Vse, against his Feoffees; for before the Statute, the Feoffees were owners of the Land, but now it is destroyed, and the *cestuy aq*; Vse is owner of the same; Before the possession ruled the Vse, but since the Vse governeth the Possession, Indentures subsequent be sufficient to direct the Vses of a Fine or Recovery precedent, when no other certaine and full declaration was made before.

Attorney.

AN Attorney ought to doe every thing in the name, and as the act of him which gave him the authoritie; As Leases in name of the Lessor, but he must say, By vertue of his

Letter of Attorney, I doe deliver you Poſſeſſion and ſeizin of, &c. for, &c.

An Attorney muſt firſt take poſſeſſion before he can make Livery of Seizin.

If an Attorney doe make Livery of Seizin; otherwiſe then he hath warrant, then it is a diſeizin to the Feoffor.

An Attorney muſt be made by writing ſealed, and not by word.

CHAP. XXXII.

EXCHANGE.

In Exchange, both the eſtates muſt bee equall, there muſt be two Grants, and in every Grant, mention muſt be made of this word Exchange.

It may be done without Livery of Seizin, if it be in one Shire or elſe it muſt be done by Indenture, and by this word Exchange, or elſe nothing paſſeth without livery.

EXCHANGE, importeth in the Law a Condition of Re-entry, and a Warranty voucher, and recompence of the other land that was given in Exchange; an Aſſignee cannot re-enter, nor vouch, but Rebate; Exchanger may re-enter upon an Aſſignee. And the ſame condition defeated in part, is defeated in the whole, and the ſame law is in partition.

CHAP.

CHAP. XXXIII.

GRANTS.

GRANTS must be certaine: A Grant to *I.S.* or *I.N.* is voide for the incertaintie, although it be delivered to *I.S.* The delivery of the Deed Will not make a void Grant good, or to take effect.

The Lord cannot Grant the Wardſhip of his living Tenant; becauſe of the uncertaintie who ſhall be his heire, unleſſe he name ſome perſon.

When any thing is granted that is not certaine, as one of my horſes, then the choyce is in the Grantee.

When ſeverall things are granted, then it is in the choyce of him that is to doe the firſt Act.

A man cannot grant, nor charge that which he never had.

A man may charge a Reverſion.

A Perſon may grant his tythes, or the Wooll of his Sheep for yeares.

A thing in action, a cauſe of a ſuite, right of entrie, or a Title for a condition broken, or

ſuch like, may not bee given or granted to a Stranger. But only to the Tenant of the ground, or to him that hath the Reverſion, or Remainder.

A thing that cannot begin without a Deed, may not be granted without a Deed; As a Rent-Charge, Fayer, &c. Every thing that is not given by delivery of hands, muſt be paſſed by Deed, the right of a thing Reall or perſonall, may not be given in, nor releaſed by word; A rent of condition, or a re-entrie may not be reſerved to one that is not partie to the Deed.

All things that are incident to others, paſſe by the grant of them, that they are incident unto.

A man by his Grant, cannot prejudice him that hath an elder title.

If no eſtate be expreſſed in the Grant, and Livery and ſeizin be made, then the Grantee hath but eſtate for life; But if there be ſuch Words in the Grant, which will manifeſt the Will of the Grantor, ſo his will be not againſt the law, the eſtate ſhall be taken according to his intent, and will.

All Grants ſhall have a reaſonable conſtruction, and all Grants are made to ſome purpoſe, and therefore reaſon would they ſhould be conſtrued to ſome purpoſe.

All

All Grants ſhall bee taken moſt ſtrong againſt him that made it, and moſt beneficiall to him to whom it is made.

To Grants of Reverſion, or of Rents, &c. there muſt bee Attornment, otherwiſe nothing paſſeth, if it be not by matter of Record.

Attornment.

ATtornment is the agreement of the Tenant to the Grant, by writing, or by Word; as to ſay, I doe agree to the Grant made to you, or I am well contented with it, or I doe Attorne unto you, or I doe become your Tenant, or I doe deliver unto the Grantee a peny, by way of ſeizin of a Rent, or pay, or doe but one ſervice onely in the name of the whole; it is good for all.

It muſt be done in the life-time of the Grantor.

Without Attornment, a Signiory, a Rent charge, a Remainder, or a Reverſion, will not paſſe, but by matter of Record.

Without Attornment, ſervices paſſe not by the ſale of the Manor, nor from the Manor, but by hargaine and ſale inrolled.

Attornment muſt be made by the Tenant of the Free-hold, when a Rent-charge is granted.

By the Attornment of the Termor to the Grantee of a Reverſion, with Liverie, and

the Rent alſo, though no mention be made thereof; before attornment a man may not diſtraine, nor have an action of waſte.

By fine, the Lord may have the Wardſhip of the body, and Lands before the attornment of his Tenant.

The end of attornment, is to perfect Grant, and therefore may not be made upon condition, or for a time.

A Tenant that is to perfect a Grant by Attornment, cannot conſent for a time, nor upon a Condition, nor for part of a thing granted: But it ſhall enure the whole abſolutely.

If the Tenant have true notice of all the Grant, then ſuch Attornment is void.

Attornment neceſſary upon a Deviſe.

CHAP. XXXIV.

Leases.

A Leaſe for yeares muſt be for a time certaine, and ought to expreſſe the terme, and when it ſhould begin, and when it ſhould end certainly; And therefore a Leaſe for a yeare, and ſo from yeare to yeare, during the life of *I. S.* but for two yeares, it may bee made by Word or Writing; If I Leaſe to *I. N.* to hold untill 190. pounds bee paid,

paid, and make no livery of ſeizin, hee hath eſtate only at Will.

A Leaſe from yeare to yeare, ſo long as both the parties pleaſeth, after entrie in any yeare, it is a Leaſe for that yeare, *&c.* till warning be given to depart. 14. *H.* 8 16.

A Leaſe beginning from henceforth, ſhall bee accounted from the day of the delivery: from the making, ſhall bee taken incluſive from the day of the making, or of the date excluſive.

If Lands diſcend to the heire before his entrie, he may make a Leaſe thereof.

A man lets a houſe, *cum pertinent*, no lands paſſe, but if a man let a houſe, *cum omnibus terris eidem pertinent*, there the lands thereunto uſed paſſe.

If a man lets Lands, wherein is Coale-mines, quarrie, and ſuch like, if they have been uſed, the Tenant may uſe them, if they bee not open, if the Tenant for them imploy them not on the Land, it is waſte, likewiſe Marle; the land is the place where the Rent is to be paid and demanded, if no other Place between the parties be limitted.

Treſpaſſe is not given for paying of the Rent to the Leſſor, howſoever it be payable there.

And if a man let lands without impeach-

ment of Waſte, and a Stranger cut downe the trees, and the Leſſee doth bring an action of Treſpaſſe, he ſhall not recover for the value of the Trees, but for the Crop, and burſting of his cloſe, and the heire of the Leſſor ſhall have ſuch trees, and not the Executor of the Leſſee, unleſſe they be cut by the Leſſee, and enjoyed by the Grantee, without Waſte.

Leſſee for yeares, or for life, Tenant in Dower, or by the curteſie, or Tenant in tayle after poſſibilitie, *&c.* have onely a ſpeciall intereſt or property in the trees, being upon the ground, growing as a thing annexed unto the Land, ſo long as they are annexed thereunto.

But if the Leſſee, or any other ſever them from the Land, the propertie and intereſt of the Leſſee in them, is determined, and the Leſſor may take them, as things that are parcell of his Inheritance, the Intereſt of the Leſſee being determined.

To accept the rent of a void Leaſe, will not make the Leaſe good; But avoidable it will.

If the Husband and Wife doe purchaſe Lands to them and the heires of the Husband; and he make a Leaſe, and die; his wife may enter, and avoide the Leaſe for her life, but if ſhe die, leaving the husband, who afterward dies, before the terme ends, the Leaſe is good

good to the Leſſee, againſt the heire.

Where it is Covenanted and granted to *S.I.* that he ſhall have Five Acres of land in *D.* for yeeres, this is a good Leaſe, for *conſeſſit* is of ſuch force as *dimiſit*.

If a man make a leaſe for 10. yeeres, and afterwards maketh another leaſe for 21 yeers, the latter ſhall be a good leaſe for 11. yeeres, when the firſt is expired.

If the Leſſee at his coſt, doe put glaſſe in the Windowes, he may not take the ſame away again, but he ſhall be puniſhed for Waſte; and ſo of Wainſcot, and ſeeling, if it bee not fixed with Screwes.

Tenant in tayle may make a leaſe of ſuch lands or inheritance, as have been commonly letten to farme, if the old leaſe be expired, ſurrendered or ended, within one yeere after the making of the new; But not without impeachment of Waſte, nor above 21. yeeres, or three lives, from the day of the making, reſerving the old Rent, or more, 32. *H.* 8. By Indenture of Leaſe, by Tenant in tayle, for 21. yeeres, made according to the forme of the Statute, rendring the ancient, or more Rent. If the Tenant in tayle die, it is a good leaſe againſt his Iſſue; But if a Tenant in Tayle die without Iſſue; the Donor may avoid this Leaſe, by entrie, 32. *H.* 8, 28. And if he in the

Remain-

Remainder, do accept the Rent, it shal not tye him, for that the Tayle is determined, the Lease is determined, and voyded. *Ed.6.19.*

The husband may make such a Lease of his wifes lands by Indenture, in the name of the husband and wife, and she to seale thereunto, and the rent must be reserved to the husband and his wife, and to the heires of the wife, according to her estate of Inheritance.

A Lease made by the husband alone, of the Lands of his Wife, is void after his death; But the Lessee shall have his corne.

By the husband and wife, voidable, if it be not made as aforesaid.

If a man doe let Lands for yeares, or for life, reserving a Rent, and doe enter into any part thereof, and take the profit thereof, the whole Rent is extinguished, and shall be suspended, during his holding thereof.

The acceptation of a re-demise, to begin presently, is suspension of the Rent, before any entrie; otherwise of a re-demise to begin in *futuro*.

Reservations and *Exceptions*.

THere are divers words, by which a man may reserve a Rent, and such like, which he had not before, or to keepe that which hee had, as *Tenendum*, *reservandum*, *solven-*

ſolvendum, faciendum, it muſt bee out of a Meſſuage, and where a diſtreſſe may be taken; and not out of a Rent: and it muſt bee comprehended within the purport of the ſame Word.

Exceptions of part ought alwayes to be of ſuch things which the Grantor had in poſſeſſion at the time of the Grant.

The heire ſhall not have that which is reſerved, if it be not reſerved to him by ſpeciall words.

If a man make a Feoffment of Lands, and reſerve any part of the profits thereof, as the graſſe, or the Wood, that the Reſervation is void, becauſe it is repugnant to the feoffment.

A man by a Feoffment, Releaſe, Confirmation, or Fine, may grant all his right in the Land, ſaving unto him his Rent-Charge, *&c.*

Things that are given only by taking, and uſing: As paſture for foure Bullocks, or two loades of Wood, cannot bee reſerved, but by way of Indenture, and then they ſhall take effect by way of Grant, of the Grantor, during his life and no longer, without ſpeciall Words.

Exceptions of things, as Wood, Myne, Quarrie, Marle, or ſuch like; if they be uſed, it is implied by the Law, that they ſhall bee uſed;

uſed; and the things, without which they cannot be had, is implyed to be excepted, although no, &c.

But otherwiſe, if they be not uſed, then the way, and ſuch like muſt be excepted.

An Aſſignee may be made of Lands given in Fee, or for life, or for yeeres, or of a Rent-charge, although no mention be made of the Aſſignee in the Grant.

But otherwiſe it is of a promiſe, Covenant, or Grant, or Warranty.

If a Leſſee doe aſſigne over his terme, the Leſſor may charge the Leſſee, or aſſigne at his pleaſure.

But if the Leſſor accept of the Rent of the Aſſignee, knowing of the aſſignement, hee hath determined his exception, and ſhall not have an Action of debt againſt the Leſſee, for Rent due after the aſſignment.

If after the aſſignement of the Leſſee, the Leſſor doe grant away his Reverſion, the Grantee may not have an action of debt againſt the Leſſee.

If a Leſſee doe aſſigne over his intereſt, and die, his Executor ſhall not be charged for rent due after his death.

If the Executor of a Leſſee doe aſſigne over his intereſt, an action of debt doth not lie againſt him for Rent due after the aſſignement.

If the Leſſor enter for a condition broken, or the Leſſee doe ſurrender, or the terme end, the Leſſor may have an action of debt for the arrerages.

A Leaſe for yeeres, vending rent, with a condition, that if the Leſſee aſſigneth his terme, the Leſſor may re-enter. The Leſſee aſſigneth, the Leſſor receiveth the rent of the hands of the aſſignee, not knowing of the aſſignement, it ſhall not exclude the Leſſor of his entrie.

A thing in a Condition may be aſſigned over for good cauſe, as juſt debt: as whereas a man is indebted unto me in 20. pounds, and another doth owe him 20. pounds, he may aſſigne over his Obligation unto me, in ſatisfaction of my debt, and I may juſtifie the ſuing for the ſame, in the name of the other, at my owne proper coſts and charges.

Alſo where one hath brought an action of debt againſt *I.N.* which promiſeth me, that if I will aide him againſt *I.N.* I ſhall be paid out of the ſumme, in demand I may aide him.

An aſſignee of Lands, if hee be not named in the condition, yet he may pay the money to ſave his Land.

But he ſhall receive none, if hee be not named; the tender ſhall be to the Executor of the Feoffees.

Assignee shall alwayes be intended, he that hath the whole estate of the Assignor, that is assignable; A Condition is not assignable, and not of an Executor, or Administrator: if there bee such an Assignee, the law will not allow an Assignee in the law, if there bee an assignee indeed; so long as any part of the estate remaineth to the Assignor, the tender ought to bee made to him or his heires, it serveth; yet a colourable payment to the heire, shall not veste the estate out of the Assignee, as a true payment will, *viz.* Covenant.

CHAP. XXXVI.

SVRRENDERS.

A Surrender is an Instrument testifying with apt words, that the particular Tenant of Lands, or Tenements for life, or yeeres, doth sufficiently consent, that hee which hath the next immediate Remainder, or Reversion thereof, shall also have the particular estate of the same in possession; and that hee yeeldeth, or giveth the same to him for ever; Surrender ought forthwith to give a present possession of

of the thing Surrendred, unto him which hath ſuch an eſtate, where it may be drowned.

A Joynt-Tennant cannot ſurrender to his fellow.

Eſtating of things that may not be granted without a Deed, may be determined by the Surrender of the Deed to the tenant of the Land.

Leaſe for yeares cannot ſurrender before his Terme begin, he may grant, he cannot ſurrender part of his Leaſe.

Surrenders are in two manners;

In *Deed.*

In *Law.*

A Surrender in law, is when the Leſſee for yeares doth take a new Leaſe for more yeares.

A Surrender in Deed, muſt have ſufficient words to prove the aſſent, and will of the Surrenderer to Surrender; and that the other doe alſo thereunto agree.

The Husband may Surrender his wifes Dower for his life, and her Leaſe for ever.

By Deed indented, a man may Surrender upon condition.

CHAP.

CHAP. XXXVII.

RELEASES.

A Releaſe, is the giving, or diſcharging of a Right, or Action which a man hath, or claimeth againſt another, or out of, or in his Lands.

A Releaſe or Confirmation made by him, that at the time of the making thereof had no right, is void; if a right come to him afterwards, unleſſe it be with warranty, and then it ſhall barre him of all right that ſhall come to him after the warranty made.

Releaſe, or Confirmation made to him that at the time of the Releaſe, or Confirmation made, had nothing in the Lands, is voide, it behoveth him to have a Free-hold, or a poſſeſſion and privitie.

A Releaſe made to a Leſſee for yeeres, befor his entrie, is voide.

A man may not releaſe upon a Condition, nor for a time, nor for part; But either the Condition is void, and the time is void, and the Releaſe ſhall enure to the partie to whom it is made for ever, for the whole, by way of extinguiſhment: But a man may deliver a Releaſe to another, as an Eſcrowe, to deliver to

I.S. as his Act and Deed, if *I.S.* doe performe ſuch a thing, or Releaſe upon a condition by Deed indented, may be good.

A Joynt-tenant or a Rent-charge, may releaſe, yet all the Rent is not extinct, nor yet if he purchaſe the lands, his fellow ſhall have the Rent ſtill.

If the grantee releaſe parcell of a Rent-charge to the Grantor, yet all the Rent is not extinct.

A Releaſe to charge an eſtate, ought to have theſe words, Heires, or words to ſhew what eſtate he ſhall have.

A releaſe made to him that hath a Reverſion, or a Remainder in Deed, ſhall ſerve and helpe him that hath the Frank-tenement; So ſhall a Releaſe made to a Tenant for life, or a Tenant in Tayle, inure to him in the Reverſion, or Remainder, if they may ſhew it, and ſo to Treſpaſſors, and Feoffees, but not to Diſſeiſors.

A Releaſe of all manner of Actions doth not take away an entrie, nor the taking of ones Goods againe, nor is any Plea againſt an Executor.

A Releaſe of all demands, extinguiſheth all Actions Reall and Perſonall, appeales Executions, Rent-charge, Common of Paſture, Rent-Service, and all right, and Seizure, and

all right in Lands, and propertie in Chattels; But not a possibilitie, or future duty, as a Rent payable after my death, and such like.

CHAP. XXXVIII.

CONFIRMATION.

Confirmation, is when one ratifieth the Possession, as by Deed to make his Possession perfect; or to discharge his estate, that may be defeated by anothers entrie.

AS if a Tenant for life, will grant a Rent-Charge in Fee, then he in the Reversion may confirme the same Grant.

Whereas a man by his entrie, may defeat an estate; there by his Deed of Confirmation, hee may make the estate good.

A Confirmation cannot charge an estate that is determined by expresse Condition, or limitation; To confirme an estate for an houre, if it be for Tenant for life, it is good for life; If to Tenant in Fee, for ever.

A lease for yeares may be confirmed for a time, or upon condition, or for a piece of the Land; But if a Franck-tenement bee, it shall

ſhall enure to the whole abſolutely.

A Confirmation to charge an eſtate, muſt have words to ſhew what Eſtate hee ſhall have.

To confirme the Eſtate of Tenant for life, to his heires, cannot be but by *Habendum*, the Land to him and his heires: And therefore it is good to have ſuch a *Habendum* in all confirmations,

In a Confirmation, new ſervice may not be reſerved, old may be abridged.

A Confirmation made to one Diſeizor, ſhall be voidable to the other, ſo ſhall not a Releaſe.

CHAP. XXXIX.

CONDITION.

There are two manner of Conditions, one expreſſed by Words, another implyed by the Law, the one called a Condition in deed, the other, a Condition in Law.

ESTATES made, and the condition againſt the law, the Eſtate's good, the Condition's voide.

If the State beginneth by the Condition, then both are voide.

Bonds with Conditions, expreſly againſt the Law, are voide.

Conditions repugnant, the eſtate good, the Condition void.

Conditions impoſſible, are voide, the Eſtate good; it ſhall not enlarge any eſtate.

By pleading, a man may not defeate an Eſtate of Franck-Tenement, by force of a condition in Deed; without he ſhew the Condition of Record, or in writing ſealed; yet the Jurie may helpe a man, where the Judges will take their Verdict at large: of Chattels he may.

Promiſe doth make a Condition; but when it doth depend upon another ſentence, or hath reference to another part of the deed; it maketh no condition, but a quallification, or limitation of the ſentence, or of that part of the Deed, as provided, that the perſon of the Grantee ſhall not be charged.

He which hath intereſt in a Condition, may fulfill the ſame for ſafeguard of himſelfe.

Betweene the parties, it is not requiſite the Condition be performed in every thing, if the other doe agree, but to a Stranger it muſt.

If the Obligee be partie to any Act, by which the Condition cannot bee performed; then the Obligor ſhall be diſcharged; So he ſhall be by the Act of the Condition.

Where the firſt Act in the Condition is to be performed by the Obligee, and he will not doe

doe it, there the Obligation is not forfeited.

Where no time is ſet, if the Condition bee for the good of a ſtranger, or of the Obligee, then it is to be performed within convenient time, if for the good of the Obligor, at any time during their lives; Immediately, ſhall not have ſuch a ſtrict conſtruction; but that it ſhall ſuffice, if it bee done in convenient time.

If a man be bound to pay money, or farme Rent, he muſt ſeek the parties: But if he bee bound to performe all payments, if he render his farme on the land, it ſufficeth.

If the Feoffee, or Feoffor die before the day of payment, the tender ſhall be to the Executor, although the heire of the Feoffee doe enter, if the heire bee not named, *vide*, Aſſignee in aſſignment.

The money muſt be tendred ſo long before Sun-ſet, that the receiver may ſee to tell it.

To pay part of a Summe at the day, cannot be ſatisfaction for the whole ſumme, as a horſe or a roabe is. But before the day, or at another place, at the day of the requeſt, and acceptance of the Obligee, is full ſatisfaction.

An Acquittance is a good barre, if nothing be paid.

In all caſes of Conditions, a payment of a

certaine ſumme in groſſe, touching Lands, or Tenements, if lawfull tender be once refuſed, he which made the tender is diſcharged for ever.

And the manner of the tender, and payment ſhall be directed by him that made it, and not by him that did accept it, as that hee paid the ſumme in full ſatisfaction, and that hee accepted thereof in full ſatisfaction.

An acquittance is a good bar, &c.

Where a man is bound to pay money, to make a Feoffment, or renounce an Office, or the like, and no time is limited when he ſhall doe it, then upon requeſt, he is bound to performe it, in ſo ſhort a time as he may.

But where the time is limited, if hee doe refuſe before the day it is no matter, if he bee readie to performe it at the day.

Where a Covenant or Condition is to marry or Enfeoffe a ſtranger by ſuch a day; the refuſall of the Stranger, is no Plea, as that of the Obligee is; The Obligee is to bee ready on the Land, at his owne perill; a ſtranger muſt be requeſted: if he refuſe, the Obligation is forfeited; wherefore it is good to have theſe words, if the Stranger doe thereunto aſſent.

Entrie.

Entrie.

THe determination of an eſtate is not effected before entrie.

When any perſon will enter for a Condition broken, hee muſt bee ſeized on the ſame courſe and manner, he was when he departed from his poſſeſſion.

It behoveth ſuch perſons as will re-enter upon their Tenants to make a demand of the rent.

If the Leſſor demand before hee dye, his heire may enter.

If the Leſſor diſtraine he may not re-enter.

The Leſſor may accept of the rent, and yet re-enter: but if he receive the next rent hee may not, for that eſtabliſheth the Leaſe.

Entry into one acre in the name of more, is good; it doth not extend into two Counties.

By the Entry of the Husband, the Franck-tenement ſhall be in the wife, and ſo of ſuch like.

In Gavill kind Land, the eldeſt ſonne only ſhall enter for the breach of a Condition.

Demand.

THE Land is the place where the rent is to be paid and demanded, if there be no other place appointed.

And there the Lessor himselfe, or his sufficient Attorney, a little before Sunne set in the presence of two or three sufficient witnesses, shall say, here I demand of *I.B.* 10*l.* due to me at the Feast of, *&c.* for a Messuage *&c.* Which he holdeth of me in Lease by Indenture, *&c.* and there remaine; the last day the rent is due to be paid untill it be dark, that he cannot see to tell the money.

CHAP. XL.

WARRANTIES.

There are three manner of Warranties.

Lineall.
Collaterall.
By Discent.

WArranty Lineal, is where a man by his Deed bindeth him and his heires to Warranty and dyeth, and the Warranty doth discend to his issue.

Warrantie Collaterall is in another line, so that he to whom it discendeth cannot convey the title that he hath in the Testaments by him that made Warranty.

Warranty by Disseisin is where he which hath

hath no right to enter, entreth, and maketh a warranty: this is by Diſſeiſin, and barreth not.

Lineall Warranty barreth him that claimeth Fee, and alſo Fee-taile with Aſſets in Fee; if he ſell, his ſonne may have a Formedon.

Collaterall Warranty is a barre to both, except in ſome Caſes that bee remedied by Statute, as Warranty by Tenement, by the curteſie, except he hath enough by diſcent, by the ſame Tenement.

Tenant,

In dower, for life, not remedied, but doe barre the heire, and him in reverſion.

A Warranty diſcendeth alwaies to the heir at the Common law, *viz.* the eldeſt Son, and followeth the eſtate, and if the eſtate may be defeated, the Warranty may alſo.

It barreth not the ſecond Sonne in Gavillkind although all the ſons ſhall be vouched, and not the eldeſt alone. Yet he only ſhall be barred.

To plead a Warranty againſt him that made it, or his heires, is called a Rebutter.

Where Fee, or Franck-tenement is Warranted,

ranted, the party ſhall have no advantage, if he be not Tenant.

Where a Leaſe for yeares is warranted, it ſhall be taken by way of Covenant, and good, if he be outed.

The Feoffor by the words *dedi & conceſſi*, ſhall be bound to warranty, during his owne life.

CHAP. XLI.

COVENANTS.

COvenants are of two ſorts; expreſſed by words in the Deed, or implyed by the Law. A covenant in Deed is an agreement made by the Deed in writing, between two perſons to performe ſome things and ſealed: for no writ of Covenant is maintainable, without ſuch a ſpecialty, but in *London*, &c.

When a Covenant doth extend to a thing in being parcell of the demiſe, or thing to bee done by force of the Covenant is *quodamodo*, annexed, or appertaining to the thing demiſed and goeth with the land, it ſhall bind the aſſignee, if he be not named: as to repaire the houſes, it ſhall bind all that ſhall come to the ſame by the act of the law, or by the act of the party.

But

But if the Covenant doe concerne the land, or thing demised in some sort, the Assignee shall not be charged, although he be named; as to make a Well at another bodies house, or to pay a summe of money to the Lessor or to a stranger, But the Lessee his executors and Administrators shall be charged.

If the Covenant doe extend to a thing that had no being, but to bee made new upon the Land, it should bind the Assignee, if hee be named, because he shall have the benefit of it.

If a man make a Lease for yeares, and the Lessee covenanteth and granteth to pay, *&c.* to the Lessor his heires and assignes, yearely during, *&c.* ten pound, his executors shall have it.

A Covenant in Law, upon a demise, or grant, the assignee in Deed, or in law may have a Writ of Covenant.

An Obligation to performe all Covenants and grants is forfeit on the breach of a Covenant in Law.

A Covenant in Law is not broken but by an elder title.

A Covenant in Law may be qualified by the the mutuall consent of the parties.

CHAP.

CHAP. XLII.

How Chattels perſonall may be bargained, ſold, exchanged, lent and reſtored.

A Contract is properly where a man for his money ſhall have by the aſſent of another, certaine goods, or ſome other profit at the time of the contract, or after.

In all Bargaines, Sales, Contracts, Promiſes, and Agreements, there muſt be *quid pro quo*, preſently, unleſſe day be given expreſly for the payment, or elſe it is nothing but communication.

If a man doe agree for a price of wares, he may not carry them away before he hath paid for them, if hee have not day expreſly given him to pay for them.

But the Merchant ſhall retaine the wares untill he be paid for them, and if the other take them, the Merchant may have an action of treſpaſſe, or an action of debt for the money at his choice.

If the bargaine be that you ſhall give mee ten pound for my horſe, and you doe give me a penny in earneſt, which I doe accept: This is a perfect bargaine, you ſhall have the horſe by an action of the Caſe, and I ſhall have the money by an action of Debt.

If

If I ſay the price of a Cow is foure pound, and you ſay you will give me foure pounds and doe not pay me preſently, you may not have her afterwards, except I will; for it is no contract. But if you goe preſently to telling of your money, if I ſell her to another, you ſhall have your action of the Caſe againſt me.

If I buy one hundred loades of wood to be taken in ſuch a Wood at the appointment of the vendor, if hee upon requeſt will not aſſigne them unto me, I may take them, or I may ſell them; But if a ſtranger doe cut downe any part of the trees, I may not take them; But I may ſupply my Grantee of the reſidue, or have my action of the Caſe.

If the bargaine be, that I ſhall give you ten pounds for ſuch a Wood, if I like it upon the view thereof, this is a bargaine at my pleaſure upon my view; and if the day be agreed upon, if I diſagree before the day, if I agree at the day, the bargaine is perfect, although afterwards I doe diſagree. But I may not cut the wood before I have paid for it; If I doe, an action of Treſpaſſe will lie againſt me, and if you ſell it to another, an action of Treſpaſſe on the Caſe will lie againſt you.

If I ſell my horſe for money, I may keepe him untill I am paid, but I cannot have an action of debt untill he be delivered; yet the

propertie of the horse is by the bargaine in the bargainer, or buyer; but if hee doe presently tender me my money, and I doe refuse it, hee may take the horse, or have an action of detainment. And if the horse die in my stable between the bargaine and the delivery, I may have an action of debt for my money, because by the bargaine the propertie was in the buyer.

If a Deed be made of Goods and chattels, and delivered to the use of the Donee, the property of the Goods and Chattels are in the Donee presently: before any entry, or agreement, the Donee may refuse them if hee will.

If I take a Horse of another mans, and sell him; and the owner take him againe: I may have an action of Debt for the money, for the bargaine was perfect by the delivery of the Horse, *Et caveat Emptor*. Every Contract importeth in it selfe an assumption; for when one doth agree to pay money, or deliver a thing upon consideration, he doth as it were, assume and promise to pay and deliver the same, and therefore when one selleth any goods to another, and agreeth to deliver them at a day to come; and the other in consideration thereof agreeth to pay so much money on the delivery, or after; in this case, he may

have

have an action of debt, or an action on the Case upon the assumption.

The duty to resigne an action personall may not be apportioned, as if I sell my Horse and another mans for ten pounds, who taketh his Horse againe, I shall have all the money.

If a man retained a servant for 10.l. *per annum*, and he depart within the yeare, hee can have no wages: if it were to bee paid at two Feasts, and the man after the first Feast die, he shall have wages but for the first Feast, therefore men take order for it in their Wills.

By a Contract made in a Faire or Market, the property is altered: Except it bee to the King, so that the buyer know not of the former propertie, and doe pay tole, and enter it; and those things as thereupon ought to be done, it must bee on the Market, and at the place where such things are usually sold, as Plate at the Gold smiths stall, and not in his Inner shop.

In exchange of a Horse for a Horse, or such like, the bargaine is good without giving of day or delivery.

If a thing be promised, by way of recompence for a thing that is past; it is rather an accord than a contract, and upon an accord, there lieth no account, but he unto whom the promise is made may have charge, by reason of the

promise,

promiſe, which he hath alſo performed; then he ſhall have an account for the thing promiſed, though hee that made the promiſe have no profit thereby; as if a man ſay to another man, heale ſuch a poore man, or make ſuch a high way, *&c.*

The intent of the party ſhall be taken according to the Law, as if a man retaine a ſervant, and doe not ſay one yeere, or how long he ſhall ſerve him, it ſhall bee taken for one yeere, according to the Statute.

In all contracts he that ſpeaketh obſcurely, or ambiguouſly is ſaid to ſpeake at his owne perill, and ſuch ſpeeches are to bee taken ſtrongly againſt himſelfe.

CHAP. XLIII.

Of Lending and Reſtoring.

IF Money, Corne, Wine, or ſuch other things, which cannot be redelivered, if it be occupied or bee borrowed: If it perill, it is at the periſh of the borrower.

But if a Horſe, or a Cart, or ſuch other things, as may be uſed, and delivered againe, be uſed in ſuch manner as they were lent, if they periſh, hee that oweth them ſhall beare the

the losse, if they perish not through the default of him that did borrow them, or that he did make a promise at the time of delivery, to redeliver them safe againe. If they bee occupied in any other wise than according to the lending, in what wise soever it perish; if it be not in default of the owner, he that did borrow them, shall be charged with them in Law and Conscience.

If a man have goods to keepe to a certaine day, he shall be charged, or not charged after, as default or defaults is in him.

But if he have any thing for keeping them safe, or make promise to redeliver them, he shall be charged with all chances that may fall because of his promise.

If a man find goods of another mans, if they be hurt or lost by the negligence of him that found them, he shall be charged to the owner.

If a common Carrier goe by waies that be dangerous for robbing, and will drive by night, or other unfit time, and is robbed; or if he doe overcharge his horse, or driveth so that his stuffe fall into the Water, or otherwise be hurt by his default, he shall be charged by his default.

And if a Carrier would percase refuse to carry, unlesse a promise were to him, that

he ſhall not be charged with any ſuch miſdemeanours, that promiſe were voyd.

Every Inholder is bound by the Law, *bona & Catalla* of his Gueſt to keepe in ſafety, ſo long as it is within the Inn, if the Gueſt did not deliver them unto him, nor acquaint him with them.

He ſhall not be charged if the Servant or Companion of the Gueſt do imbezell them; or if the Gueſt doe leave them in the outward Court.

The Oſtler ſhall not anſwer for the Horſe that is put to paſture at the requeſt of the Gueſt: but if he doe it of his owne head, he ſhall.

If a man offer to take away my Goods, I may lay my hands upon them, and rather beat him, then ſuffer him to take, or carry them away.

Chap. XLIIII.

How far other mens contracts and miſdemeanours doe bind us.

A Man ſhall be bound by many Treſpaſſes of his wife, but not to ſuſtain corporall puniſhment for it. For Murder, Fellony, Battery, Treſpaſſe, bor-

borrowing or receiving of money in his Masters name, by a Servant, the Master shall not be charged unlesse it be done by his command, or came to his use by his assent.

If I command one to doe a Trespasse, I shall be a Trespassor, or otherwise if I doe but consent: There is no accessary in Trespasse.

We shall be charged if any of our family lay or cast any thing into the high way, to the noisance of his Majesties Liege people.

Every man is bound to make recompence, for such hurt as his beasts shall doe in the corne or grasse of his neighbour, though he knew not that they were there; and for his Dogs, Beares, &c. if they hurt the goods or Chattell of any other; for that he is to govern them.

A man shall not be charged by the contract of his wife or his servant, if the thing come to his use, having no notice of it: But if he command them to buy, he shall be charged though they come not to his use; or had notice therof.

If a Wife or Servant use to buy and sell, if he sell his Masters Horse, and exchange his Oxe for wheate that commeth to his Masters use, his Master may not have an action of Trespasse for it, but he shall be charged for the Corn, and the other need not to shew that he had warrant to buy for him.

If a man ſervant that keepeth his ſhop, or that uſeth to ſell for him; ſhall give away his goods, he ſhal have treſpaſſe againſt the Donee.

But if I deliver my Goods to another to keep to my uſe, and he doe give them away, I ſhall not: for the Donee had notice whoſe goods they were, as in the caſe of the Servant.

If a man make another his generall receiver, which receiveth money, and maketh an acquittance, and payeth not his Maſter; yet that payment diſchargeth the debtor.

If a Servant keep his Maſters fire negligently, and action lyeth againſt the Maſter: Otherwiſe, if he beare it negligently in the ſtreet.

If I command my ſervant to diſtraine, and he doth ride on the diſtreſſe; he ſhall be puniſhed, not I.

If a man command his Servant to ſell a thing that is defective, generally to whom he can ſell it; deceipt lyeth not againſt him: Otherwiſe if he bid him ſell it to ſuch a man, it doth.

A Contract or a promiſe made to the wife is good, when the husband doth agree, ſo it is to a Servant; and it ſhall be ſaid to be made to the Husband and Maſter himſelfe.

If a man taketh a Wife that is in debt, he ſhall be charged with her debts, during her life; if ſhe dye, he ſhall be diſcharged.

CHAP.

CHAP. XLV.

Wils and Teſtaments.

Having hitherto treated of ſuch contracts as do take effect in the life time of the parties, with their differences, it is now to deale with Inſtruments which take effect after their Deaths; that thoſe things which they have preſerved with care, and gotten with paines in their life, might be left by their poſterity in peace and quietneſſe after their Death: of which ſort are laſt Wils and Teſtaments.

There are two ſorts of Wils; Written and Nuncupative.

A Nuncupative Teſtament is when the Teſtator doth by Word onely, without writing declare his Will, before a ſufficient number of Witneſſes, of his Chattels onely: for Lands paſſe not but by writing; It may for the better continuance after the making, be put in writing, and proved: But it is ſtill a Teſtament Nuncupative.

A written Teſtament is that, which at the very time of the making therof is put in writing; by which kind of Teſtament in writing,

only Lands and Teſtaments paſſe, and not by word of mouth only.

Two things are required to the perfection of a Will, by which Lands paſſe, *viz.* Firſt writing, which is the beginning. Secondly the death of the deviſor, which is the finiſhing.

In a Will of Goods, there muſt be an Executor named; otherwiſe of Lands.

A man may make one Executor or more ſimply, or conditionally for a time, or for parcell of his Chattels.

If no Executor be named, then it ſtill retaineth the name of a laſt Will, and ſhall be annexed to the Letters of Adminiſtration in regard of the Gift.

Gavill kind Lands may be deviſed by cuſtome.

Lands holden { *In Socage tenure* / *Knights Service* } { *all* / *2 parts* 3 } { *is deviſable in writing.*

FEare, fraud, and flattery, three unfit accidents to be at the making of a Will.

A woman may make a Will of the goods of her husband, by his conſent and licence; by Word is ſufficient, and of the goods ſhe hath as Executor, without his conſent; but ſhe cannot give them unto him.

A Boy after his age of foureteene, and a Mayd

Mayd after her age of twelve, may make a Will of their goods and chattels by the Civill Law.

The Will of the Donor ſhall be alwayes obſerved, if it be not impoſſible, or greatly contrary to the Law.

A Deviſor is intended *Inops conſilii*, and the Law ſhall be his Counſell, and according to his intent appearing in his Will, ſhall ſupply the defect of his Words.

A Prerogative Will is five pound in another Dioceſſe.

A man may not traverſe the Probate of a Teſtament, or Letters of Adminiſtration directly, but he may ſay againſt the Teſtament that the Teſtator never made the party his Executor.

CHAP. XLVI.

DEVISES.

A Deviſe ought to be good and effectuall at the time of the death of the Deviſor.

The Deviſee may not enter into the terme, or take a Chattell, but by the delivery of the Executor.

But he may ſue for it in Court Chriſtian.

Into Franck tenement, or inheritance he may enter.

Deviſees are Purchaſees, as if a Leaſe for yeares be Willed to a man and his Heires, the Heire ſhall have it; for Heire is a name of purchaſe here.

A Reverſion of Lands or Tenements will paſſe by the name of Lands and Tenements in a Deviſe.

If a man deviſe all his Lands and Tenements; a Leaſe for yeares doth not paſſe, where he hath Lands in Fee, and alſo a Leaſe there, otherwiſe it will.

If a man deviſe all his goods, a Rent charge which he had for yeares will paſſe, and all other his perſonall Chattels.

And if a man give all his moveables to one, he ſhall have all his Horſes, Cattell, pans and perſonall chattels; and all his immoveables: to another, he ſhall have all his Corne growing, and fruit on his Trees, and the chattels reall.

A man may deviſe Lands or goods to an Infant in the mothers belly, or goods to the Church-wardens of *D.*

There is great diverſity where the property is deviſed, and when the occupation is deviſed: A man may deviſe that a man ſhall have the

the occupation of his Plate, or other chattels during his life, or for yeares, and if he dye within the terme, that it ſhall remaine to *M. A.* and it is good, for the firſt hath but the occupation, and the other after him ſhall have the property.

But if a chattell be given to one for life, the remainder to another, the remainder is voyd.

For a Grant or Deviſe of a Chattell for an houre, is good for ever; and the Deviſee may diſpoſe of it; but if he doe not, the other ſhall have it.

A man may Deviſe his Lands he holdeth in Leaſe, but not his Leaſe, under this condition; Provided, that if the Deviſee dye within the terme then he ſhall have it.

If a man Will his goods to his wife, and that after her deceaſe, his Sonne and Heire ſhall have the houſe wherein they are; the ſhall have the houſe for terme of her life, yet it is not deviſed unto her by expreſſe words. But it doth appeare that his intent was ſo by the words.

If a man willeth his Lands to his Wife, till his Son commeth to the age of 21 yeares, and the woman taketh another husband, and dyeth, the other husband ſhall have the Intereſt.

By a deviſe a man may have the Fee ſimple without expreſſe words of Heires, as if Lands

be

be willed to a man for ever, or to have and to hold to him and to his aſſignes, &c.

By Will, Lands may be intailed without the word, Body: as if Lands be given to a man, and to his heires male, it doth make an eſtate taile.

If a man Will that his Executors ſhall ſell his Lands, the inheritance doth deſcend to the Heire; yet the Executors may enter, and enfeoffe the Vendee.

And if Lands be given to the Executors to ſell, and they receive the profits thereof to their owne uſe, and doe not ſell the ſame in reaſonable time, the Heire may enter.

An Executor may ſell, if the other will not.

If Lands be recovered againſt Tenant for life or for yeares, by an action of Waſte, or former title, he may not give his Corne.

If the Cognizee have ſowne the Lands, and the Cognizor bring a *ſcire*: he may give the Corne ſowne.

If a man deviſe *omnia bona & Cattalla*, Hawks nor Hounds doe not paſſe, nor the Deere in the Parke, nor the Fiſh in the Ponds.

CHAP.

Chap. XLVII.

EXECUTORS.

AN Executor is he that is named and appointed by the Teſtator, to be his ſucceſſor in his ſtead to enter, and to have his goods and chattels, to uſe Actions againſt his Debtors, and Legaties, ſo farre as his goods and chattels will extend.

Where two Executors are made, and one doth prove the Will, and the other doth refuſe, notwithſtanding he that refuſeth may adminiſter at his pleaſure, and the other muſt name him in every action, for every duty due to the Teſtator, and his releaſe ſhall be a good barre: if he doe ſurvive he may adminiſter, and not the Executor of him that dyed; but otherwiſe if all had refuſed.

If one prove the Will in the name of both, he that doth not adminiſter, ſhall not be charged.

If the Executor doe once any action that is proper to an Executor, as to receive the Teſtators debts, or to give acquittance for the ſame, &c. he may not refuſe.

But

But other acts of charity or humanity, he may doe; as to diſpoſe of the Teſtators goods about the funerall, to feed his cattell leſt they periſh, or to keepe his goods leſt they be ſtoln, theſe things may every one doe, without danger.

When Executors doe bring an action, it ſhal be in all their names, aſwell of them that doe refuſe, as of other.

But an action muſt be brought againſt him that doth adminiſter only, and he which firſt commeth ſhall firſt anſwer.

An Executor of an Executor, is Executor to the firſt Teſtator. And ſhall have an action of debt, accompt, &c. or treſpaſſe, as of the goods of the firſt Teſtator carryed away, and execution of Statutes and Recognizances, &c. St. 25. *Ed.* 5.

The title and intereſt of an Executor, is by the Teſtament, and not by the Probate, but without ſhewing it, they may releaſe the Probate.

The Juſtices will not allow them to ſue actions.

The Executor ſhall have the wardſhip of the Body and Lands of the ward in Knights ſervice, but not in Soccage, and leaſes for yeares, and rent charges for yeares, Statutes, Recognizances, Bonds, Lands in Executions; Corne upon

upon the ground, Gold, Silver, Plate, Jewels, Money, Debts, Cattell, and all other goods and Chattels of the Teſtator, if they be not deviſed, and may deviſe them; But if he doe will *omnia bona & Cattalla ſua*, the goods of the Teſtator paſſe not, neither ſhall they be forfeited by the Executor.

An executor is chargeable for all duties of the Teſtator that are certaine, but not for Treſpaſſe, nor for receipt of rents, nor for occupation of Lands, as Bayliffe or Guardian in Soccage, &c. For this is not any duty certaine ſo farre as he ſhall have aſſets; If the Executor doe waſte the goods of the Teſtator, he ſhall pay them of his owne.

An Executor ſhall not be charged, but with ſuch goods as come to his hands, but if a ſtranger take them out of his poſſeſſion, they are aſſets in his hands.

If an executor take goods of another mans amongſt the goods of the Teſtator, he ſhall be excuſed of the taking in Treſpaſſe.

Duties by matter of record ſhall be ſatisfyed before duties by ſpecialty, and duties by ſpecialty before charges, and Legacies before other duties.

An Executor may pay a debt or credit of ſome kind, depending the writ, before notice of the action, but not after notice or iſſue joyned.

an

An Executor may pay debts with his owne money, and retaine ſo much of the Teſtators goods, but not Lands appointed to be ſold.

Any of theſe words, *debere, ſolvere, recipere*, borrowed, or any word that will prove a man a debtor, or to have the money; If it be by Bill, will charge the Executor, or Adminiſtrator, but not the Heire, if he be not named.

CHAP. XLVIII.

ADMINISTRATOR.

AN Adminiſtrator, is he to whom the Ordinary of the place where the inteſtate dwelt, committeth the Teſtators goods, Cattell, credits, and rights.

For whereſoever a man dyeth inteſtate, either for that he was ſo negligent he made no Teſtament, or made ſuch an Executor as refuſed to prove it, or otherwiſe is of no force; the Ordinary may commit the adminiſtration of his goods to the Widow or next of kin or to both, which he pleaſeth, making requeſt; and revoke it againe at his pleaſure.

The Ordinary may aſſigne alſo a Tutor to the

the inteſtates children, to his ſonnes untill twelve yeare.

But ſo that it be not a prejudice to him that is the Guardian, and after thoſe yeares, he or ſhee may reſpectively chooſe their owne Curators, and the Guardian may confirme them, if there be not good order taken by their fathers Will.

As if ſuch a Tutor dye, the Infant cannot have an Action of account againſt his Executor.

The power and charge of an Adminiſtrator is equall in every point to the power and charge of an Executor: a man may have an action of the caſe againſt an Executor or Adminiſtrator upon the aſſumption of the Teſtator, upon good conſideration, or debt for Labourers wages, by the Statute.

And if a man make an Infant his Executor, the Ordinary may commit the Execution of the Will to the Tutor of the Childe, to the Childes behoofe, untill he be of the age of 17. yeares, and if he be granted for longer time, it is voyd.

An Adminiſtrator *durante minoritate*, may doe nothing to the prejudice of the Infant, he may not ſell any of the goods of the deceaſed unleſſe it be upon neceſſity, as for the payment of debts, or that they would periſh, nor

let

let a Leaſe for a longer time, then whileſt he is Executor.

An Infant upon the true payment of a debt due to the Teſtator, may make an acquittance, and it ſhall be good.

For a Childe may better his eſtate, but not make it worſe.

CHAP. XLIX.

HEIRE.

IF a man dye ſeiſed of any Lands, and doe not diſpoſe of them by his Will, they doe deſcend to his Heire, as aforeſaid.

And he ſhall have not only the Glaſſe, and Wainſcot, but any other of ſuch like things affixed to the Free-hold, or ground; as Tables, Dormant, Furnaces, Fats in the Brew-houſe, or Dye-houſe; and the Box or Cheſt wherein the Evidences are; the Hawkes and the Hounds, the Doves in the Dove-houſe, the Fiſh in the Pond, and the Deere in the Parke, and ſuch like.

He ſhall be charged by ſpecialty, for the debts of his Anceſtour, ſo long as he hath aſ-

ſets,

ſets, if the Executor or Adminiſtrator have not ſufficient.

No Law nor Statute doth charge the Heire for the wrong, or treſpaſſe of his Father, but by expreſſe words.

Widow.

THe Widow ſhall have all her apparell, her bed, her copher, her chaines, borders, and Jewels, by the honorable cuſtome of the Realme, except her husband unkindly give any of them away, or be in debt, that it cannot be paid without her bed, &c. yet ſhe ſhall have her neceſſary apparell.

What things are Arbitrable, and what not.

THings, and Actions perſonall incertaine are Arbitrable, as Treſpaſſe, taking away of a Ward, &c.

But things certaine are not arbitrable, but when the ſubmiſſion is by ſpeciality, if they be not joyned with others incertaine, as debt with treſpaſſe, &c.

Matters concerning the common-Wealth, ſome are not arbitrable criminall offences, as felonies and ſuch like, concerning the crime.

In the ſubmiſſion, three things are to be regarded.

Firſt, that it be made in writing with the

parties Covenants, or bonds ſubſequent and ſufficient to binde them, their heires, Executors and aſſignes to performe the Award, which ſhall be thereupon made, that both the Arbitrators may know their power, and the parties revoke not their power. For all is voide that is not contained in the Submiſſion, or neceſſarily depending thereupon; And the Arbitrators labour loſt, if they want meanes to compell the ſame to be executed.

Secondly, that there be power given to them ſufficient to doe all things neceſſary for the ordering of the controverſies, as to appoint times and places for their meetings, to examine and decide the matters committed, and to bring their parties with their proofes, evidences, and witneſſes thither together before them, and to puniſh the place defective, and to expound and correct ſuch doubtfull ſentences, and queſtions, as may ariſe upon their Award, afterwards inconvenient to either parties, contrary to equity, and the Arbitrators good meaning; which inconveniences were not before by them ſeene, at the making of the Award, *Temporis filia veritas.*

Thirdly, convenient time and place are to be limitted for the yeelding up their Award to the parties, or to their aſſignes.

Six

Six things to be regarded in an Arbitrament.

1 THat it be made according to the very ſubmiſſion, touching the things committed, and every other circumſtance.

2 That it be a finall end of all controverſies committed.

3 That it appoint either partie to give or doe unto the other ſomething beneficiall in appearance at leaſt.

4 That the performance be honeſt and poſſible.

5 That there be a meane how either part by the Law may attaine unto that which is thereby awarded unto him.

6 That every partie have a part of the Award delivered unto him.

For if it faile in any of theſe points, then is the whole Arbitrament voyde, and of none effect.

Examples thereof.

1 AN Award that the parties ſhall obey the Arbitrament of *A.M.* is voide, for power may not be aſſigned.

2 An Award that any of the parties ſhall be bound, or do any other Act by the advice of

the Arbitrator, is not good, except it be in the ſubmiſſion ſo, but that the parties ſhall be bound, or make aſſurance by the advice of Counſell, is good.

2 An Award, that the parties ſhall be non-ſuited, is not good, becauſe it is no finall end, for the partie may begin againe: that the partie doe withdraw his ſuite, is good.

If the Submiſſion be of divers things, and the Award only of ſome of them, yet is the Award good for that part, as if the Submiſſion be of all Actions reall and perſonall onely, or if it be onely, *de poſſeſſione*.

3 If two ſubmit themſelves to the Arbitrament of all treſpaſſes, and it is awarded that the one ſhall make amends to the other, and nothing is awarded for the others benefit; this Award is voide.

So it were if one of them ſhould goe quite againſt the Other, if the Submiſſion were not by bond, for an award muſt be finall, obligatorie, and ſatisfactory to both parties.

An Award, that either partie ſhall releaſe to the other all actions, and that becauſe the one hath treſpaſſed more then the other, hee ſhall pay to the other firſt, is good.

In debt or treſpaſſe of goods taken, that the Defendant ſhall retaine part, and the Plaintiffe to have the reſt, is not good.

4 An

4 An Award, that one of the parties ſhall doe an act to any ſtranger; the Act is voide, if the parties be not bound.

Or if it be that he ſhall cauſe a Stranger to enfeoffe, or be bound to the other partie, becauſe he hath no meanes to compell the ſtranger.

5 An Award is voide, if it be neither executed, nor any meanes by law for the execution thereof, as if it ſhould be awarded that one ſhould pay the other 10 pounds, this is good, for he may recover the ſame by an action of debt. But if it were awarded, the one ſhould deliver to the other an acre of Land, or doe ſuch like Act Executory, it were voide, if it be not delivered ſtraight-way, or proviſion made by bond, or otherwiſe to compell the payment thereof, according to the Award, if the ſubmiſſion be not by ſpecialty.

6 Indenters of Arbitrament muſt be made of ſo many parts, that every perſon may have apart.

Arbitramentum æquum tribuit cuiq; ſuum.

AN Award is commonly made by Laymen, and ſhall be taken according to their intent, and not in ſo preciſe a forme as Grants, or pleadings, but as verdicts, yet the

ſubſtance of the matter ought to appeare either by expreſſe words, or by words equivalent, or by thoſe that doe amount thereunto.

But it were good that Awards were drawn up by ſome that is skilfull, for the avoiding of Controverſies, which otherwiſe may ariſe about the ſame.

Agreement.

AN agreement is made betweene the parties themſelves, there muſt be a ſatisfaction made to either party preſently, or remedy for the recompence, or elſe it is but an indeavour to agree.

Tender of money without payment, or agreement to pay money at a day to come, is not any ſatisfaction before the day be come, and the money be paid, it cannot be pleaded in Barre, in an action of Treſpaſſe. For that as the other partie hath no meanes to compell the other to pay the money: So he may refuſe it at the day, if he will, otherwiſe in an Arbitrament, but money paid at a day, before the Action brought, is a good plea.

FINIS.

A TREATISE OF PARTICVLAR ESTATES.

Written by Sir *John Doddridge*, Knight.

LONDON,
Printed by *R. Cotes*, for *W. Cook*,
1642.

A
TREATISE
OF
PARTICULAR
ESTATES.

Written by Sir John Doddridge,
Knight.

LONDON,
Printed by T. Roycroft, for N. Cook,
1675.

A TREATISE OF PARTICVLAR ESTATES.

Particular Eſtates.

A Particular Eſtate is ſuch, as is derived from a generall Eſtate, by ſeparation of one from the other; As if a man ſeiſed in Fee ſimple of Lands, or Tenements, doth thereof cheate by gift or grant an Eſtate Taile, or by demiſe a Leaſe for life, or any eſtate for yeares, theſe are in the Donee, or Leaſee,

Leaſes, Particular Eſtates in poſſeſſion derived and ſeparated from the Fee ſimple, in the Dedonor, or Leaſor in Reverſion.

Alſo if Lands be Demiſed to *A.* for life, the remainder to *B.* and the Heires of his body, the remainder to *C.* and his Heires, the Eſtate for life limited to *A.* the Eſtate Tayle limited to *B.* are particular Eſtates, derived *ut ſupra*, and ſeparated in Intereſt from the Fee ſimple; the remainder given to *C.* albeit the ſame remainder doth depend upon thoſe Particular Eſtates.

And of Particular Eſtates, ſome are created by agreement betweene the Parties; and the particular Eſtates before ſpecifyed: And ſome by act of Law; as the ſtate in Tayle *apres* poſſibility *de* iſſue extinct, Eſtates by the courteſie of *England*, Dower and Wardſhip; for albeit an eſtate in Dower, be not compleate untill it be aſſigned, which oftentimes is done by aſſent and agreement betweene parties; yet becauſe the party that ſo aſſigneth the ſame, is compellable ſo to doe by courſe of Law, that Eſtate is alſo ſaid to be created by Law; alſo an Eſtate at Will is a kinde of a particular Eſtate, but yet not ſuch as maketh any Diviſion of the Eſtate of the Leſſor, is ſeiſed, for notwithſtanding ſuch an Eſtate, the Leſſor is ſeiſed of the Land in this Demeaſure

as

as for Fee in Poſſeſſion, and not in Reverſion.

Alſo an Eſtate at will is not ſuch particular Eſtate, whereupon a Remainder may depend; But of all the Eſtates before mentioned, many fruitfull rules, and obſervations, are both generally, and particularly ſo lively ſet forth by the ſaid Maſter *Littleton* in the 1, 2, 3, 4, 5, 6, 7, and 8. Chapter of his firſt Booke, which is extant as wel in *Engliſh* as in *French*, whereunto I referre you.

Poſſeſſion.

IT is further to be obſerved, that all Eſtates that have their being, are in Poſſeſſion, Reverſion, Remainder, or in Right, but of all theſe, Poſſeſſion is the principall; there are two degrees of the firſt, and chiefeſt poſſeſſion, *in fait poſſ'*, in Law or Deed, is ſuch as is before ſpoken of; And that is moſt proper to an Eſtate, which is preſent and immediate; but yet ſuch poſſeſſion of the immediate Eſtate, if it be not greater then a tearme doth operate and enure to make the like poſſeſſion of the Free hold, or Reverſion; when

when a man is ſaid to have a Tearme, it is to be intended for yeares, when it is ſaid, a man to have the Fee of Lands, it is alſo to be intended a Fee ſimple; Poſſeſſion is that poſſeſſion, which the Law it ſelfe caſteth upon a man, before any Entry, or Pernancy of the profits: As if there be Father and Sonne, and the Father dyeth ſeiſed of Lands in Fee, and the ſame doe deſcend to the Sonne, as his next Heire in this caſe, before any entry, the ſame hath a poſſeſſion in Law; ſo it is alſo of a Reverſion exportant, or a Remainder dependant upon particular Eſtate, or Life; in which caſe, if Tenant for life dye, he in Reverſion, or Remainder, before his Entry, hath onely poſſeſſion in Law. All manner of poſſeſſions that are not poſſeſſions in *fait*, are onely poſſeſſions in Law, and it is to be obſerved then, if a man have a greater Eſtate in Lands then for yeares, the proper phraſe of ſpeech is, that he is thereof ſeiſed, but if hee for yeares onely, then he is thereof poſſeſſed, But yet nevertheleſſe the Subſtantive (poſſeſſion) is proper as well to the one as to the other.

Reverſion.

A Reverſion is properly an Eſtate which the Law reſerveth to the Donor, Grantor, or Leſſor, or ſuch like, which he doth diſpoſe parcell of his Eſtate, when he doth diſpoſe leſſe *E*ſtate in Law then that whereof he was ſeiſed, at the time of ſuch diſpoſition, as if a man ſeiſed of Lands in Fee, doth give the ſame to another; and the Heires of his body, or if he doth diſmiſſe the ſame for life or yeares; in theſe caſes the ſame reſerveth the Reverſion thereof in Fee, to the Donor, or Leſſor, and his Heires; becauſe he departed not with his whole Eſtate, but onely with a particular Eſtate, which is leſſe then his Eſtate in Fee; and ſuch Reverſion is ſaid to be expectance upon the particular Eſtate. Alſo if he that is but Tenant for life, for Land, and doth by Deed or paroll, give the ſame *S.* in Taile, or for tearme of his life, which is a greater Eſtate then he may lawfully diſpoſe; In this caſe the Law reſerveth a Reverſion in Fee, in ſuch Donor, though he were formerly but Tenant for life: and the reaſon thereof is, for that by ſuch unlawfull diſpoſition, which by deed or word, cannot be without livery and ſeiſin,

ſeiſin, he doth by wrong plucke out the right-full ſtate in Fee, from him that was thereof formerly ſeiſed in Reverſion or Remainder, and thereof by a priority of time, gained in an inſtance, he was ſeiſed of a Fee ſimple, at the time of the execution thereof. But if a man ſeiſed of Lands in Fee ſimple, giveth the ſame to *A.* and his Heires, untill *B.* doe dye without Heire of his body; in this caſe the Law reſerveth no Reverſion in the Donor, becauſe the ſtate is diſpoſed to *A.* is a Fee ſimple, determinable, is in nature ſo great as the ſtate, wch the Donor had at the time of ſuch gift & conſequently he departed therby with al his ſtate, & thereby an apparent difference is betweene a gift made to *A.* and the Heires of his owne body, and a gift made to him and his Heires, untill *B.* dye without Heire of his body: for in the one caſe the Donor hath but an Eſtate Tayle, and in the other a Fee ſimple determinable, hath a poſſibility of Revertor: for if *B.* dye without Heire of his body, then whether *A.* be living or dead, ſhall revert to the Donor, but ſuch poſſibility of Reverſion, for he that hath but ſuch a poſſibility, hath no Eſtate, nor hath he power to give his poſſibility; but in the other caſe, the Donor hath eſtate in Fee; and therefore he hath power to diſpoſe thereof at his pleaſure.

Remain-

Remainder.

A Remainder is a remnant of an Eſtate diſpoſed to another at the time of creation of ſuch particular Eſtates, whereupon it doth depend, as if *S.* ſeiſed of Lands in Fee, demiſeth the ſame to *B.* for life, the Remainder to *C.* and the Heires of his body, the Remainder to *D.* and his Heires; In this caſe *I. S.* hath a particular Eſtate of the Leſſor, is then alſo diſpoſed to *C.* and *D.* *ut ſupra*, whereby *B.* hath an Eſtate for life, *C.* a Remainder in Taile, and *D.* a Remainder in Fee, depending in order upon the particular Eſtate in poſſeſſion; and in every Remainder five things are requiſite.

Firſt, That it depend upon ſome particular Eſtate.

Secondly, That it paſſe out of the Grantor, Donor, or Leſſor, at the time of the creation of the particular Eſtate, whereupon it muſt depend.

Thirdly, That it veſte during the particular Eſtate, or at the inſtant time of the determination thereof.

Fourthly, that when the particular Eſtate

is created, there be a Remnant of an Eſtate left to the Donor, to be given by way of Remainder.

Fifthly, That the perſon or body to whom the Remainder is limited be either capable at the time of limitation thereof, or elſe in *potentia propinqua*, to be thereof capable, during the particular Eſtate, If Lands be given to *I. S.* and his Heires, the Remainder for default of ſuch Heire to *I. D.* and his Heires, that Remainder is voyd, Becauſe it doth not depend upon any particular Eſtate; But if Lands be given to *I. D.* the life of *I. D.* the Remainder to *I. B.* his Remainder is good, for it is not limited to depend upon a Fee ſimple; but upon a particular Eſtate, which is onely called an Eſtate for life of *I. B.* deſcendable, if Lands be given to *B.* for 11. yeares, if *C.* doe ſo long live, the Remainder, after the death of *C.* to *D.* in Fee, this Remainder is voyd, for in this caſe it cannot paſſe out of the Leſſor, at the time of the creation of the particular Eſtate for yeares: but if a Leaſe be made to *B.* for life, the Remainder to the Heires of *C.* (who is then living) this Remainder is good, upon *A.* contingency, that if *C.* dye in the life of *B.* for that Remainder may well paſſe out of the Leaſor preſently without *be yaunce*, without any incon-

inconvenience, becauſe onely the inheritance ſeparated from the Freehold, is in abeyance, if Lands be given for life, with a Remainder to the right Heires of *I. S.* and the Tenant for life dyeth in the life of *I. S.* this Remainder is voyd, becauſe it dyed not veſt or ſettled, either during the particular eſtate, or at the time of the determination thereof, for untill *I. S.* dye, no perſon is thereof capable, by the name of the Heire.

But if Lands be given to *I. S.* for tearme of his life, the Remainder to his right Heire, (in the ſingular number) and the Heires of his body, and after *I. S.* hath iſſue a Sonne and dyeth, that is a good Remainder, and the Sonne hath thereby an Eſtate Tayle, for although it were unpoſſible that ſuch Remainder ſhould veſt during the particular Eſtate; becauſe during his life, none could be his Heire; yet it might be and did veſt at the inſtance of his death, which was at the time of his determination of the particular Eſtate.

Concerning the fourth thing, if a man ſeiſed of Lands in Fee, granteth out of the ſame a Rent, or Common to Paſture, or ſuch like things, which before the grant had no being, to *I. S.* for terme of life, the Remainder to *I. D.* in Fee, this Remainder is void, becauſe

of this thing Granted, there was no Remnant in the grant to diſpoſe. And becauſe ſome heretofore have beene of opinion, that albeit the ſame cannot take no effect, as another Grant of a new Rent or Common. *Vi res magis valeat quam operat.*

This is a rule in Law, that a thing enjoyed in a ſuperiour degree, ſhall not paſſe under the name of a thing in any inferiour degree; and therefore if Lands be given unto two perſons, and unto the Heires of one of them, unto the Husband and Wife, and Heire of the Husband; and he that hath the Eſtate of Inheritance, granteth the Verſion of the ſame Land to another in Fee, ſuch Grant is voyd, becauſe the Grantor was thereof ſeiſed in a ſuperiour degree, *viz.* in Poſſeſſion, and not in Reverſion, as appeareth 22. *Ed.* 4. *fo.* 2. & 13. *Ed.* 3. *Brook.* title of Grants, 137.

And concerning the firſt and laſt thing; if a Leaſe be made of Land, for terme of life, the Remainder to the Major and Commonalty of *D.* whereas there is no ſuch Corporation therein, being this Remainder is meerely voyd, albeit the Kings Majeſty by his Letters Patents, doe create ſuch Corporations, during the particular Eſtate for at the time of ſuch grant, the Remainder was void, becauſe then there was no ſuch body corporate thereof

thereof, capable, or *potentia propinqua*, to bee created, and made capable thereof, during the particular Estate, but the possibility thereof, was then forraine and probably intended. The like law is, if a Remainder be limited to *I.* the Sonne of *T. S.* who had then no Sonne, and afterwards during the particular Estate, a Sonne is borne, who is named *John*, yet this Remainder is voyd; for at the time of such a Grant, as was not to be probably intender, that *T. S.* should have any Sonne of that name.

Also before the dissolution of Abbies, if a Lease of Land were made to *I. S.* for life, the Remainder to one that then was a Monke, such Remainder was voyd, for the cause before alledged, albeit we were deraigned during the particular Estate. But if such Remainder had beene limited to the first begotten Sonne of *I. S.* it had beene good, and should accordingly have vested in such a Son afterwards borne, during the particular Estate.

Rights.

A Right in Land, is either cloathed or naked; a Right cloathed, is when it is wrapped in a poſſeſſion, Reverſion, or Remainder; a naked Right, which is alſo moſt commonly called a Right, is when the ſame is ſeparated from the poſſeſſion or Remainder, by diſſeiſin, diſcontinuance, or the deveſting, and ſeparating of the poſſeſſion, as for example, if a Leaſe of Land be made for life to *I. S.* the Remainder to *I. D.* in Fee, in this caſe I. *S.* hath a Right cloathed with a Remainder. But if a ſtranger that hath no Right or Title, doth in the ſame caſe enter into the Land by wrong, and put out *J. S.* of poſſeſſion, ſuch entry by wrong is called a diſſeiſin; and therefore the poſſeſſion is moved from the Right by reaſon thereof, the Diſſeiſor, is ſeiſed of the Land, and I. *D.* hath alſo the like naked cloathing to the Remainder, by ſuch diſſeiſin, is likewiſe deveſted, and plucked out of him, cannot be reveſted in him, during the right of ſuch particular Eſtate, unleſſe the poſſeſſion of the particular Tenement, but therewith reveſted, which muſt be by this entry or recovery by action;

and

and by ſuch entry of the particular Tenement, or by his Recovery, with execution, the Remainder ſhall be inveſted, as well as the particular Eſtate; and ſo there is a Right in goods and chattels, as well as Lands, Tenements, and Hereditaments, which is alſo cloathed with a poſſeſſion, ſo long as the Rightfull proprietor hath the ſame, but if another doth take them from him by wrong, he now hath onely a naked Right to the ſame, which cannot be by him granted, for the cauſe before alledged, but yet he may releaſe his Right there unto him that is thereof poſſeſſed; for the ſame reaſon that is before alledged, if a releaſe of Right, happen to be forfeited to the King, his Highneſſe may grant the ſame by his Prerogative.

FINIS.

CERTAINE OBSERVATIONS CONCERNING A DEED OF FEOFFAMENT.

By T. H. Gent.

Cujus posse est velle.

LONDON,
Printed for *W. Cook*, and are to be sold at *Furnivals-Inne* gate, in *Holbourne*. 1642.

TESTAMENTAL DEED, OR OBSERVATIONS CONCERNING

The Printer to the Reader.

COurteous Reader, *a Copy thereof comming to my hands (not having seene any thing in this kind extant before) and conceiving it would be gratefully accepted of many, I have adventured to commit it to the Presse, and so* Farewell.

TO

His approved Friend and loving Cosen, *THOMAS CULLUM* Gent.

All health and happinesse.

Right Courteous Sir,

HAving by your procurement, these three yeares last past, officiated under a Professor of the Law, (who desirous of retirement) onely negotiated in Country affaires, whereby it happened that my chiefest imployment was concerning conveyan-

ces of Lands and other contracts *in pais*, Now because it seemeth unto me very requisite to give you some account of my time (as one from whom I tooke first occasion to imploy it, and agitate such businesse as I have done) I have chosen (amongst other things which my small experience hath taught me) to present unto you a few observations, upon, and about a Deed of Feoffament, which in the course of my compasse, I have occurred: whereof my request is, you would please to deigne the acceptation, which happily may prove a perswasive argument, to induce me to undertake some more choyce and serious discourse hereafter, *Deo*

annuente. My time ſpent as aforeſaid hath learned me, that the Fee ſimple eſtate of Lands, &c. may be gained by ſeverall kindes of conveyances, beſides by deed of Feoffament, as namely, firſt, by Fine, which is a reall contract or agreement, and by Lawyers named a Feoffament of Record, it comprehendeth whatſoever a Feoffament doth or can include, nay it hath a more large operation of its owne nature, barring intailes peremptorily, if claimed by or under him or them, who were cognizors, and levyed the fine. Secondly, by common Recovery, which hath no ſmall affinity in nature with a fine, being a common aſſurance of lands, &c.

and

and is grounded upon the ſtrict principles and rules of Law. This kind of conveyance barreth, and defeateth aſwell eſtates in taile, as alſo all Reverſions and Remainders, expectant or dependant thereupon (except in the Kings caſe, and perhaps in ſome other ſpeciall caſes) a fine can onely barre the Heire in taile, claiming by vertue thereof, and neither Reverſion or Remainder, but a common recovery extendeth further as is aforeſaid. Thirdly, By bargaine and ſale (upon conſideration) by Deed indented and inrolled, according to the purport and intent of a certaine Statute made 27. *H.* 8. Fourthly, by Grant, whereby incorporeall Inheritances

ces are usually conveyed, as Advowsons, Commons, &c. which are called incorporeall, for that they be not in livery or in manuall occupation, *nec tangi possunt, nec videri.* Fifthly, by exchange, whereby the possession of Lands, &c. may be transmuted or changed from one man unto another. Sixthly, by Release, or Confirmation to a particular Tenant, which stand in the same predicament with Grants, and worke in the same nature. Seventhly, by grant of a Reversion or Remainder, whereunto attornement of the particular Tenant, is necessary and materiall. Eighthly, by Will in writing, which ariseth by vertue and authority of certaine

Acts of Parliament, made 32. & 34. H. 8. I may adde the custome of some particular places, where Lands might be devised before the enaction of the said Statutes: here I deny not but there may be many other wayes and kindes of conveyances, whereby property in Lands, &c. may be transferred from one person unto another in Fee simple, but as I remember those which I have already mentioned, are most frequently used, or at least such as hitherto I have most usually frequented; yet recollecting my thoughts, another meanes by which Lands, &c. may by way of conveyance be obtained in Fee simple, commeth into my minde, viz. by

Covenant to ſtand ſeiſed to uſes, which alwayes of neceſſity muſt be upon good conſideration, as blood, marriage, &c. for if the party in ſuch caſe to whom the uſe is directed, be not wife, childe, or coſen to the Covenantor, or one whom he purpoſeth and intendeth to marry, no uſe will or can ariſe, *& per conſequentiam* no conveyance. This kinde of conveyance, ſince the ſaid Statute of 27. *H.* 8 is become a common aſſurance of Lands, &c. for the ſame Statute whereſoever it findeth an uſe annexeth, and conjoyneth the poſſeſſion thereunto, and maketh it of the ſame quality, condition &c. with the uſe. It requireth no inrollment as a bargaine and ſale

doth, neither needeth it to bee made by deed Indented. Thus not daring confidently to affirme what I have written, or ſhal write, to be altogether conſonant to the rules of Law, for I acknowledge my ſelfe, never (as yet) to have entred over the threſhold *in officinam Legum*, which I hope will crave an Apology for my miſtakings; I take my leave, and addreſſe my ſelfe to my intended purpoſe. *Valeas.*

Your affectionate

Kinſman,

T. H.

CERTAINE OBSERVATIONS CONCERNING A DEED OF FEOFFAMENT.

The Premisses.

YOU may find in the premisses, First, The dire& nomination, as well of the Feoffor, as of the Feoffee, together with their places of residence, habitation or dwelling, and their qualities, estates, additions, or conditions. Secondly, The certaine

expreſſement and ſetting downe of the Lands conveyed.

In Com. Norff.) *Comitatus dicitur à comitando*, of accompaning together, for generally at Aſſiſes and Seſſions, thoſe of that County where ſuch Aſſiſes or Seſſions are kept uſe to be impannelled upon Juries, &c. for triall of iſſue taken upon the fact betwixt party and party, and not thoſe in another County; and it is a common preſumption, that all perſons within their Counties take notice of ſuch things as are there publiquely done, hereupon it happeneth, that where Lands, &c. lye in divers Counties, if they be conveyed by Feoffament, &c. livery of ſeiſin, muſt be made in every County, where any parcell of the lands, &c. doe lye. Otherwiſe it is of two parcels of Land in one and the ſame County. The name County, is in underſtanding all one with Shire, which is ſo called from dividing, and either of them containe a certaine portion of the Realme, which is parted into Counties, or Shires, for the better government thereof, and the more eaſie adminiſtration of Juſtice; hence it commeth to paſſe, that there is no parcell of this Kingdome, which lyeth not within the circuit or precinct of ſome County or ſhire. There are reckoned in *England*, 41. Counties or ſhires, and in *Wales* 12. The

Coun-

County of *Northfolke* lying Northward, is so called, in opposition to *Suffolke*, which lyeth towards the South, each one in respect of other gaineth his name.

The addition given to the Feoffor, you may perceive to be *Yeoman*, the Etymology whereof, Master *Verstegan* fetcheth from *Gemen*, a word anciently used amongst the *Teutonickes*, which as my Authour saith, signifyeth vulgar or common, and so the letter G, by corruption being turned into the letter Y. instead of *Gemen*, we say and read *Yemen*, or *Yeomen*. Others, (how probably I dare not affirme) derive it by contraction from these two words, *viz. Young Men*. Famous Master *Cambden*, in his *Britannia*, after he hath reckoned up sundry degrees, both of Nobility, and Gentry, ranketh *Yomen* in order next Gentlemen, naming them *Ingemos*, in which sence I apprehend *Yomen* to be mentioned in a certaine Statute made 16. *R.* 2. and in divers other Statutes. And although the derivations of words be conveniently required in the Law, and in every liberall Science, for *ignoratis terminis, ignoratur & ars*, yet to use the expression of a learned Divine, though spoken in another case, *Melius est dubitare de occultis quam litigare de incertis*: So I must leave you to your owne conceit, concerning the o-

riginall of the word *Yoman*, having onely ſet you downe one or two opinions about it: however, I muſt not forget what Sir *Thomas Smith* ſaith in his *Repub. Anglorum*, who very truely and properly calleth him a Yeoman whom the Lawes of *England* call *legalem hominem*, that is to ſay, a free man borne, and M. *Lambert* in his *Eirenarcha*, will excellently informe you who are, and who are not *probi & legales homines*.

There is no ſpeciall, but onely a generall conſideration expreſſed in the Feoffament, neither of which (as I conceive) is in ſuch caſe abſolutely materiall (though I may ſay formall) in regard of the notoriety of deeds of Feoffament, &c. for livery and ſeiſin (as ſhall be ſaid afterwards) is eſſentially required to make them perfect, which cannot be without the knowledge of others, beſides the parties themſelves, and a Feoffament doth thereby alwayes import a free and willing conſent. Otherwiſe peradventure it might have happened in a Bargaine and ſale, before 27 *H.* 8. *cap.* 16. for the better illuſtration whereof take this example: You and another man agree together, that you ſhall give him a certaine ſumme of money, for a parcell of Land, and that he ſhall make you an aſſurance of it, you pay him the money, but he maketh

maketh you no assurance, in this case although the state of the Land be still in him, nevertheless, the equity *in conscientia boni viri*, is with you, which equity is called the use, for which untill the 27 *H.* 8. *cap.* 10. there was no remedy (as saith Sir *Francis Bacon*) and that very truely, except in the Court of Chancery, but the same Statute conjoyneth and annexeth the Land and the use together, so you by this meanes for the consideration have the Land it selfe, without any further Conveyance, which is called a bargaine and sale. But those grave Senators, and worthy States men who made the said Act of the 27 *H.* 8. *cap.* 10. for the transferring of uses into possession, wisely fore-seeing that it would be very inconvenient and prejudicious, nay, mischievous, that mens possessions should upon such a sodaine, by the payment of a little money be transported from them, (and perhaps in a Taverne or Ale-house, and upon straynable advantages) did discreetly provide in the same Parliament, the said Act of 27 *H.* 8. *cap.* 16. that Lands, &c. upon the payment of money as aforesaid, should not passe without a deed indented and inrolled, as by the purport of the same Act may appeare. Now seeing that before the said act of 27 *H.* 8. *c.* 16. Lands might passe by bargaine

and

and ſale upon conſideration, without deed indented and inrolled, and might not paſſe without conſideration in ſuch manner, therefore I have heard Lawyers ſay that conſideration is ſtill required in a bargaine and ſale, though it be by deed indented and inrolled, according to the ſame Statute. Sure I am that regularly in a deed of Feoffament, it is not ſo as formerly is declared, and for the reaſon before expreſſed.

Dediſſe.

The word *dedi* (by force of an act of Parliament made 4 *Ed.* 1. *c.* 4. commonly called the Statute *de Bigamis*,) implyeth a warranty to the Feoffee, and his Heires during the life of the Feoffor, whereupon *Fitz. Herbert* in his *Natura brevium. fo.* 134. *h.* puts a caſe to this effect, *viz.* If a man give Lands to one in Fee, by Deed, by the words *dedi, conceſſi, &c.* hereby hee ſhall be bound to warrant the Lands of the Feoffee, by vertue of thoſe words, and if the Feoffee be impleaded he ſhall have his writ of *Warrant' Chart.* againſt the Feoffor, by reaſon of the words *Dedi, conceſſi, &c.* but not againſt his Heire, for the Heire ſhall not be bound to Warranty, except the Father binde himſelfe and his Heires to Warranty, &c. by expreſſe words in the deed. I know ſome alledge, that becauſe as well

well the Statute, as *Fitzh.* mention not onely *dedi*, but *conceſſi* alſo, therefore the one without the other, implyeth no warranty: to whom it may be anſwered that the Statute it ſelfe doth plainely prove againſt them, for the concluſion thereof hath theſe words, *ipſe tamen feoffator in vita ſua ratione proprii doni ſui tenetur warrantizare*; and alſo the Teſtimony of Sir *Edward Coke*, may be produced herein, who affirmeth that the Statute of *Bigamis*, *anno* 14. *Eliz.* in the Court of Common Pleas was expounded, as above is mentioned, namely that *dedi* did imply the Warranty, and Mr. *Perkins*, *cap.* 2. ſaith that *dedi* in a deed of Feoffament, comprehendeth in it a Warranty, againſt the Feoffor, and ſo doth not the word *Conceſſi*.

Conceſſiſſe.

I conceive the word *conceſſi* in Feoffaments and Grants (the implyed warranty excepted which *dedi* creates) to be of the ſame effect with *dedi*, and alſo with *confirmavi*, eſpecially in ſome caſes: to which purpoſe heare what *Littleton* ſpeaketh in his Chapter of Diſcontinuance, Alſo (ſaith he) in ſome caſe this Verbe *dedi*, or this verbe *conceſſi*, hath the ſame effect in ſubſtance, and ſhall enure to the ſame intent, as the verbe *confirmavi*; as if I be diſſeiſed of a carve of Land, and I make ſuch

a deed *Sciant præsentes, &c. quod dedi* to the disseisor, &c. or *quod concessi*, to the said disseisor the said carve, &c. and I deliver onely the deed to him, without any livery of seisin of the Land, this is a good confirmation, and as strong in Law, as if there had beene in the Deed this verbe *confirmavi, &c.*

Liberasse.

The word *Liberavi*, I take to be of the same nature with *tradidi*, which I have often seene in Feoffaments, whereof it is remarkeable, that *Hepbron* the *Hittite*, when he assured the field of *Machpelah* to *Abraham*, *Gen.*32.11. used the word *trado*: *agrum trado tibi*, that is, to *Abraham*, as *Hieromes* Translation reades it.

Feoffasse.

This word commeth from *feudum*, or *feodum*, which signifyeth Fee, and is alwayes, or for the most part, used in Feoffaments, as participating of the same nature.

Confirmasse.

Concerning the word *confirmo*, somewhat may be gathered from what hath beene spoken about the Verbe *concessisse*, yet I cannot forget how *Hierome* renders the expressement of the said assurance of the said field of *Machpelah* to *Abraham* for a possession, in these words, *confirmatus est ager, &c. Gen.*23.17.

And

And now I come to the second thing considerable in the premisses, namely the Feoffee whose addition is *generoso*.

Generoso.

Generosus, in English we read Gentleman, which some derive from the two French words, *Gentil-houme*, denoting such an one as is made knowne by his birth, stocke, and race. Sir *Thomas Smith* calleth all those Gentlemen that are above the degree of Yeomen, whence it may be concluded, that every Nobleman may be rightly termed a Gentleman, *sed non viâ versâ*. Master *Cowell* conceiveth the reason of the appellation to grow, because they observe *Gentilitatem suam*, the propagation of their blood, by giving or bearing of armes, whereby they are differenced from others, and shew from what Family they are descended.

Hæredi & assignatis suis.

Some will have an Heire so called, *quia hæret in hæreditate*, or *quia hæret in se hæreditas*, but to let such conceits of witty invention passe, it is certaine, that an Heire is so called from the Latin word *Hæres*.

Littleton in his Chapter of Fee-simple saith, that these words (his Heires) onely make the estate of inheritance in all Feoffaments, and

and Grants,&c. Sure then it is neceſſary for him that purchaſeth Lands, &c. in Fee ſimple, to have the Feoffament runne to himſelfe *& hæredibus ſuis*, for if it runne onely to himſelfe, *& aſſignatis ſuis*, although livery and ſeiſin be made accordingly, and agreeable to the deed; yet thereby onely an eſtate for life ſhall paſſe, becauſe there wanteth words of Inheritance: and without livery and ſeiſin in the caſe aforeſaid, onely an Eſtate at Will ſhall paſſe. And the reaſon why the law is ſo ſtrict in this thing (as in many others) for to preſcribe and appoint ſuch certaine words to create and make an eſtate of inheritance, is as Maſter *Plowden* ſaith in his Commentaries, for the eſchewing and avoyding of incertainty, the very Fountaine and ſpring, from whence floweth all manner of confuſion and diſorder, which the Law utterly contemneth and abhorreth; what herein hath beene ſaid, is to be apprehended and underſtood of perſons in, and according to their naturall capacities. Yet perhaps an eſtate of inheritance may ſometime paſſe in a Deed of Feoffament, by words, which may have reference, and will relate to a certainety, for *Certum eſt quod certum reddi poteſt*: as for example, You Enfeoffe me and my Heires of a certaine peece of Land, to hold to me, & my Heires, &c. and I re-

enfeoffe

enfeoffe you, in as large, ample, and beneficiall manner, as you enfeoffed me: in this caſe (they ſay) you have a Fee ſimple for the reaſon above expreſſed. So I come next to ſee what obſervations the Deed of Feoffament further affordeth.

Totam ill. pec. tre. cont.

Very neceſſary and convenient it is in deeds of Feoffament, &c. to have the Lands, &c. thereby intended to be conveyed, certainely and expreſſely to be ſet downe, aſwell how much by eſtimation in quantity, they doe containe, as the quality of the ſame, whether Meadow, Paſture, &c. being the ſpecies of Land, which is the *genus*, and the place where, and manner how they exiſt and lye, the better to ſhunne and avoid doubt, and ambiguity, which oftentimes ſtirre up occaſions of unkind ſuites and contentions betwixt party and party, I know that Grammarians reading the word *peciam*, will be ready to ſmile, and alledge, that it cannot defend it ſelfe *in bello Grammaticali*, which I eaſily confeſſe; but what then, what can they inferre from hence? will they therefore utterly condemne the uſe thereof? me thinkes they ſhould not, but might give Lawyers leave to ſpeak in their owne *Dialect*. But what, if ſome take exceptions at this word, having occaſion to meete with

with it here, what would they doe, ſhould they read the volumes of the Law, where inſtead of *bellum*, they ſhall finde *guerra*, inſtead of *Sylva*, they ſhall finde *boſcus*, and *ſubboſcus*, with a thouſand the like? ſurely (as ſaith *Eraſmus*) they might commend or elſe condemne what they could not underſtand, or happily underſtanding, might admire from whence ſuch uncouth words ſhould proceed: for their better information (if I thought they would thanke me for my labour) I could tell them, that becauſe the *Saxons*, *Danes*, and *Normans*, have all had ſome hand, or at leaſt a finger in our Lawes, therefore through the commixtion of their ſeverall Languages, it comes to paſſe that ſuch difficult termes, and harſh Latin words (if I may ſo call them) are frequently obvious in the bookes and writings of the Law. And indeed I ſee no reaſon why any man ſhould object or cavill againſt the uſage of ſuch words, though they be not claſſicall, ſeeing that aſwell in the Art of Logicke, as in Philoſophy, there are found many words, which they call *Vocabula artis*, vocables of Art, which can no better ſtand, according to the ſtrict rules of Grammar, then the ancient words of Law, which cannot be changed without much inconvenience.

Acra.

Acra, in English an Acre, seemeth to come from the Latin word *ager*. An acre is taken to be a quantitie of land containing 40 pitches in length and 4 in breadth. Master *Cowpers* in his Jurisdiction of Courts saith that a Perch is in some places more, and in some places lesse, according to the different usages in different Countries, and so then it must needes be of an Acre. But ordinarily, or for the most part, a Perch is accounted and esteemed to containe 16 foot and an halfe in length. I take it to be the same with that measure which we call a Rodde or Pole. A Perch in Law-latine is called *perca*, or *pertica*. See the Ordinance made for measuring of Land, *anno* 34 *Edw.* 1. in *Pulton. abr.* tit. Weights and measures.

Quaren.

Quarentena, in English a Furlong, or Furrow long: *Firlingus*, or *firlingum* is the same, it hath beene sometime accepted and taken for the eight part of a mile, *anno* 35 *Eliz.* and I have read that *Firlingus*, or *ferlingus* is *quinque acræ*. The Latins call it *stadium*.

Abbutt.

Abbutt is a verbe used by Lawyers, to shew how the heads of Lands doe lye, and upon what other Lands or places, denoting for the more certainty, what Lands, &c. are adjacent about the Lands, &c. abbutted. And now that I may speake once for all; in regard that Lawyers doe use to abbreviate their words in writing, the reason is not as some ignorantly have supposed, because they cannot expresse their terminations and endings, as they ought to be, but because of the multiplicity of businesse, which they are to goe through, sometimes requiring very suddaine dispatch. Yet I could wish that the custome of short writing *alicui scriptori non esset dispendium*, but I feare me too many hereby take occasion to be wilfully ignorant, which otherwise peradventure they would not doe.

Miles.

Miles, amongst the Latines, signifyeth a Souldier, and and in this place, and the like, *Miles* is to be Englished a Knight, which (as Master *Camden* noteth) is derived from the *Saxon Cnite*, or *Cnight*. The Heraldes will enforme you of divers and sundry orders of Knights, if you please to consult with them,

or their writings thereabouts. A Knight at this day is, and anciently hath beene, reputed and taken for one, who for his valour, and Prowesse, or other service for the good of the Common-wealth performed, hath of the Kings Majesty, or his sufficient Deputy, on that behalfe, beene as it were lifted up on high, advanced above, or separated from the common sort of Gentlemen: The *Romans* called Knights *Celeres*, and sometimes *Equites* from the performance of their service upon horseback, and amongst them there was an order of Gentility, stiled *Ordo Equestris*, but distinguished from those they called *Celeres*, as severall *Roman* Histories doe plainely testifie. The *Spaniards* call them *Cavalleroes*. The *French men Chivaliers*. And the *Germanes Rieters*, all which appellations evidently enough appeare to proceed from the Horse, which may be some testimony of the manner of the execution of their warlike exercises. And surely it is a very commendable policy in States to dignifie well deserving persons with honorable Titles, that others may thereby be stirred up to enterprize, and undertake Heroicke Acts, and encouraged to the imitation of worthy and renouned vertues.

Armiger, in English, signifyeth Esquire, from the *French Escuier*, and perhaps an Esquire may be called *Armiger quasi arma gerens*, from his bearing of armes. Ancient Writers, and Chronologers, make mention of some who were called *Armigeri*, whose office was to carry the shield of some Nobleman. Master *Camden* calleth them *Scutiferi*, which seemes to import as much, and *homines ad arma dati*: they are esteemed and accounted of amongst us, next in Order to Knights.

Clerici.

Clericus, In English we read Clerke. It hath with us two sundry kindes of acceptations. In the first sense it noteth such an one who by his practise and course of life doth exercise his pen in any the Kings Majesties Courts, or elsewhere, making it his calling or profession hereupon you shall find in the current of Law mention made of divers Clerkes, as for example, The Clerke of the Crowne: The Clerke of Assise: The Clerke of the warrants: The Clerke of the Market: The Clerke of the Peace, with many others. In the second sense it denoteth such an one as belongeth to,

and

and is imployed about the Ministery of the Church, that being his function, in which signification it is to be taken in this place, and in the like; for I, for my part, did never finde Clerke in the first sense appropriated to any as an addition unto any. We have the use of the word *Clericus*, from *Clerus*, or *Clericatus*, signifying the Clergy, that is to say, the whole number of those, which properly so called, or rather strictly, are *de Clero dominico*, i.e. *Hæreditate sive sorte dominica*; for *Clerus* commeth from κλῆρος, a Greeke word, signifying the same with *sors* in Latine, namely, a lot or portion.

The Habendum.

Habend'.

THe Office of the *Habendum*, is to name and limit the Feoffee, and to limit the certainety of the estate, and it may and doth sometimes qualifie the generall implication of the estate, which by construction and intendment of Law passeth in the premisses: for an example whereof, see *Buckler's* case in the second Booke of Sir Ed. Coke's Reports, and *Throgmerton's* case, in *Plowdens* Commentaries. It is to be noted, that the premisses may be inlarged by the *Habendum*, but not abridged,

eafe plainely appeareth, aſwell in the ſaid caſe of *Throgmorton*, as in *Wartesliet* caſe, reported alſo by Maſter *Plowden*, and I have read (as my collections tell me) that it is required of the *habendum*, to include the premiſſes. Moreover, the *habendum*, (as *W.N.* Eſquire, hath it in his Treatiſe of the grounds and maximes of the Law) muſt not be repugnant to the premiſſes, for if it be, it is voide, and the Deed will take effect by the Premiſſes, which is very worthy of Obſervation.

The Tenendum.

Tenend.

THe *Tenendum*, before the Statute of *Quia emptores terrarum*, made 18 *Ed.* 1. was uſually *de Feoffatoribus & haeredibus ſuis & non de capitalibus dominis feodorum*, &c. *viz.* of the Feoffors, and their Heires, and not of the chiefe Lords of the Fees, &c. whereby there happened divers inconveniences unto Lords, as the loſing of their Eſcheates, or forfeitures and other rights belonging to them by reaſon of their *Seigniories*, which as the ſame Statute expreſſeth it *durum & difficile videbatur*, &c. whereupon it was granted, provided and enacted quod *de caetero liceat uniuſquiſque liberi hominis*,

mini, terras suas seu tenementa sua, seu partem inde ad voluntatem suam vendere, ita tamen quod feoffatus teneat terram illam seu tenementum illud de capitali domino feodi illius per eadem servitia & consuetudines per quæ feoffator suus illa prius de eo tenuit. Q'estat fuit fait (as saith one) *pur l'advantage de Seignior*, which statute was made for the advantage of Lords, and indeed I easily beleeve it. Now it is evident from that which hath beene declared out of the said Statute, that at this day the *tenendum*, where the Fee simple passeth, must be of the chiefe Lords of the Fee, &c. for no man since the said Statute could convey Lands in Fee, to hold of himselfe, out of which rule the King onely (I thinke) may be excepted, and 'tis not in silence to be passed over, that where Lands, &c. are conveyed in Fee, though there be no *tenendum* at all mentioned, yet the Feoffee shall hold the same in such manner as the Feoffor held before, *quia fortis est legis operatio*: the Statute so determines.

The clause of warranty.

Et ego & hæredes mei, &c. warrantizabimus, &c. defendemus, &c.

WArrantizo, is a verbe used in the Law and only appropriated to make a War-

Warranty. *Littleton* in his Chapter of Warranty saith, *Que ceſt parol, &c.* that this word *Warrantizo*, maketh the Warranty, and is the cauſe of Warranty, and no other word in our Law, and the argument to prove his aſſertion, is produced from the forme and words uſed in a fine, as if he ſhould ſay, Becauſe the word *defendo*, is not contained in fines to create a Warranty, but the word *warrantizo* onely, *ergo, &c.* which argument deduced and drawne *a majori ad minus*, is very forcible, for the greater being inabled, needs muſt the leſſer be alſo inabled: *Omne majus in ſe continet quod minus eſt, & quod in majori non valet, nec valet in minori.* But certainely *Littleton* is to be underſtood onely of an expreſſe warranty indeed, and of a warranty annexed to Lands, for there may be, and are other words, which will extend and inure ſufficiently to warrant chattels, &c. and which will imply a warranty in Law, as *dedi, &c.* and *excambium* (as I have heard ſay) implyeth a warranty in Law, which from *Glanvil's vel in excambium*, or *eſcambium datione lib. 3. cap. 1.* may receive ſome confirmation: And *Littleton* in his Chapter of *Parceners*, teacheth that partition implyeth a Warranty in Law, &c. And leſt ſome may here ſay, that *defendo*, ſtands for *excambium*, I will tell them what

Bracton

Bracton declareth of it, speaking about a warranty in Deed, from the Feoffor and his Heires, whose words are these: *per hoc autem quod dicit (scilicet Feoffator) defendemus, obligat se & hæredes suos ad defendendum si quis vellit servitutem ponere rei datæ contra formam donationis, &c.* Lawyers in their Bookes make mention of three kindes of Warranties, *viz.* Warranty lineall, Warranty collaterall, and Warranty which commence by disseisin. The first is when one by Deed bindeth both himselfe and his Heires to Warranty, and after death, this warranty descendeth to and upon his Heire. The second is in a transverse, or overthwart line, so that the party upon whom the warranty descendeth, cannot convey the title which he hath in the Land, from him that was the maker of the Warranty. The third and last is, where a man unlawfully entreth upon the Freehold of another, thereof disseising him, and conveyeth it with a warranty, but this last cannot barre at all. Of these, you may read plentifull and excellent matter and examples in *Littletons* Chapter of Warranty, and Sir *Ed. Coke*, learnedly commenting upon him, to whom for further illustration hereof, I referre you, as also unto Master *Cowels* interpretation of words, in the title Warranty, who there remembreth di-

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vers things very worthy obſervation concerning it. Before I come to the fifth part of the Deed of Feoffament, give me leave to obſerve that a Warranty alwayes deſcendeth to the Heire at the Common Law, and followeth the eſtate (as the ſhadow the ſubſtance) and whenſoever the Eſtate may, the Warranty may alſo be defeated, and every Warranty (as ſaith Sir *Ed. Coke*) which deſcends, doth deſcend to him that is Heire to him which made the Warranty, by the Common-Law.

And moreover it is to be noted, as may be gathered from what hath been formerly ſaid, that an Heire ſhall not be bound to an expreſſe Warranty, but when the Anceſtor was bound by the ſame Warranty, for if the Anceſtor were never bound, the Heire ſhall never be charged. And I remember I have read a caſe in *Br. abr.* 35 *H.* 8. *p'.* 266. to this purpoſe. *Si home dit en ſon garrantie, Et ego tenementa prædicta cum pertinentiis præfato A. B. le donee warrantizabo, & ne dit, ego & hæredes mei, il meſme garrantera, mes ſon heire neſt tenus de garranter, per ceo que* (Heires) *ne ſont expreſſe en le garranty. B. garr.* 50. So I will forbeare to ſpeake any further herein, being a very intricate and abſtruſe kinde of learning, requiring the pen of a moſt cunning and experienced Lawyer, and now I addreſſe my ſelfe to the fifth, orderly

orderly, or formall part of the Deed of Feoffament.

The clause of in cujus, &c.

In cujus rei testimonium.

THis clause is added as a preparatory direction to the sealing of the Deed, for sealing is essentially required to the perfection thereof, because it doth plainely shew the Feoffors consent to, and approbation of what therein is contained, hereupon it will not be much devious or out of the way, to make some mention of those fashions, which in the manner of sealing, and subscribing of deeds, have beene anciently used by our Ancestors: Some report that the *Saxons* in their time, before the Conquest, used to subscribe their names to their Deeds, adding the signe of the crosse, and setting downe in the end, the names of certaine witnesses, without any kinde of sealing at all. But when the *Normans* came in, as men loving their owne Country guises, they *per pari & pari* changed that custome (as also many others) which they found here, and *Ingulphus* who was made Abbot of *Croyland*, in *an. dom.* 1075. seemeth to confirme this opinion in these words; *Normanni chirographorum confectionem cum triceibus suis, &*

alia

aliis signaculis sacris in Anglia firmare solitam, in cera impressa mutant. Yet I have read of a sealed Charter in England before the Conquest, namely that of Saint *Ed.* made to the Abby of Westminster: yet surely this doth not altogether repugne that which hath beene formerly said, for I have seene in Master *Fabians* Chronicle, and elsewhere, that Saint *Ed.* was educated in Normandy, and tis not unlikely but he might in somethings incline to their fashions. The French-men have a proverbe, *Rome n'a esté bastie tout en un jour*, and we in England use the same, namely Rome was not built in one day: So it cannot be conceived that the Normans in an Instant did alter the Saxon custome wholly in this particular, but that it did change by degrees, and perhaps at the first, the King and some nigh unto, and about him did use the impression of a Seale, which I am somewhat perswaded to believe, from a certaine story which I have heard, concerning *Richard de Lucy*, chiefe Justice of England, who in the time of *Hen.* is said to have chidden an ordinary man, because he had sealed a Deed with a private Seale *Quæ ceu pertinent ad Regis & Nobilis solummodo.* In the dayes of *Edward* the third, sealing and Seales were very usuall amongst all men, for proofe whereof I need not produce any other testimony,

mony, but the Deeds themselves; whereof almost every man hath some. But I must remember that Sir *Ed. Coke*, in the first part of his Institutes, *fo. 7. a.* seemeth to overthrow the former opinions about the first using of Seales in England, The sealing of Charters and Deeds, (saith he) is much more ancient then some have imagined, for the Charter of King *Edwin* brother of King *Edgar*, bearing date *an. dom.* 956. made of the Land called *Fecklea*, in the Isle of *Ely*, was not onely sealed with his owne seale (which appeareth by these words) *Ego Edwinus gratia Dei totius Britannicæ telluris Rex meum donum proprio sigillo confirmavi*; but also the Bishop of Winchester put to his seale, *Ego Ælfwinus Winton' Ecclesiæ divinus speculator proprium sigillum impressi*. And the Charter of King *Offa*, whereby he gave the *Peter-pence*, doth yet remaine under Seale. The either of which two Charters, are much more ancient then that of Saint *Ed.* before mentioned, yet happily there may be some reason probably assigned why as well King *Edwin* and the Bishop of Winchester, as *Offa* who was King of *Mercia* about the yeare 788. did annex their Seales to their Charters, which no King of England and Nobleman did before or after them, (except Saint *Ed.*) untill the comming in of the

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Conquerour, that ever I could learne, heare, or read of, in any Authour. Nevertheleſſe, I muſt of neceſſity leave the ſearch of ſuch reaſon to others better ſtudyed in the Commentations and alterations of perſons, times, and cuſtomes then I my ſelfe, however I never heard any one deny, but that the frequent uſe of ſealing Deeds did commence in the time of *Ed.* 3. and was not ordinarily uſed amongſt private men untill then, as hath beene formerly touched.

Of the Date.

Dat'.

IN this clauſe the Stile of the King at large, the yeare of his Reigne, and the yeare of our Lord God, according to the computation and account of the Church of England, together with the day of the moneth are expreſſed. In former times Deeds were often made without date, and that of purpoſe, that they might be alledged within the time of preſcription, as Sir *Ed. Coke*, in his ſaid Booke of Inſtitutes, *fo.* 6. very worthily obſerves, and moreover that the date of Deeds, was commonly added in the Reigne of *Ed.* 2. and *Ed.* 3. and

3. and so ever since, to whom I referre you, who in the place last quoted, hath very excellent matter and observations thereabouts. And thus to performe what I promised, I will speake a word or two concerning livery of seisin, and so conclude.

Livery of Seisin.

LIvery of Seisin is a ceremony in Law, used in the conveyance of an Estate of Freehold at the least in Lands or other things corporeall: but in a Lease for yeares, at Will, &c. Livery of Seisin is not required, it being onely a Chattell and no Freehold. By Livery of Seisin, the Feoffor doth declare his willingnesse to part with that whereof he makes the Livery, and the Feoffees acceptance thereof is thereby made knowne and manifest. The Authour of the new Termes of the Law, saith that it was invented as an open and notorious thing, by meanes whereof the Common people might have knowledge of the passing or alteration of Estates from man to man, that thereby they might be the better able to try in whom the right and possession of Lands and Tenements were, if

if they should be impannelled on Juries, or otherwise have to doe concerning the same. The usuall and common manner in these dayes of delivering of Seisin, I know to be so frequent, that of purpose I will omit it. But I pray you note with me before I make an end, that Livery of Seisin is of two sorts, *viz.* Livery of Seisin in Deed, and Livery of Seisin in Law, which is sometime termed Livery of Seisin within the view. Livery of Seisin within the view cannot be good or effectuall, except the Feoffee doth enter into the Lands, &c. whereof the Livery of Seisin was made unto him in the life time of the Feoffor; and it is not to be passed over in silence, that a Livery in Law may sometimes be perfected by an entry in Law, as if a man maketh a Deed of Feoffament, and delivers Seisin within the view, the Feoffee dares not enter for feare of death, but claimes the same; this shall vest the Freehold and inheritance in him, to which effect you may see the opinion of certaine Justices, 38 *Assis. Pl.* 23. upon a verdict of Assise in the County of *Dere*. And I conceive that this vesting of a new Estate, in the said case in the Feoffee, making his claime where he dares not enter, stands upon the same reason, for (*contrariorum eadem est ratio*) that the revesting of an ancient Estate and right in the disseisee

ſeiſee doth by ſuch claime, whereof you may read plentifully in *Litt.eton* his Chapter of Continuall Claime. It is worth the obſervation that no man can conſtitute another to receive livery for him, within the view, nor yet to deliver (as I have heard my Maſter ſay) for none can take by force or vertue of a Livery in Law, but he that taketh the Freehold himſelfe, & *e contra*. Otherwiſe it is to take and give Livery of Seiſin in Deed, for there aſwell the Feoffee in the one caſe may ordaine and make his Attorney, or Attorneyes in his name and ſtead, to take Livery, as the Feoffor in the other caſe to give Livery, *Concurrentibus iis quæ in jure requiruntur*. And now let Delivery of the Deed be added to the ſealing thereof, and the ſtate executing of the Lands thereby conveyed, and then I preſume none will refuſe to allow that every thing hath beene named, which is eſſentially required to the perfection of a bare Deed of Feoffament, and although I have mentioned the delivery of the Deed in the laſt place, yet it is not the leaſt thing, or of the leaſt conſequence or moment, for after a Deed is ſealed, if it be not delivered, *eſt a nul purpoſe*, it is to no purpoſe, and the de-

livery must be by the party himselfe, or his sufficient warrant: So it may be gathered from what hath beene said, that sealing of Deeds without delivery is nothing, and that Delivery without Sealing will make no Deed, but that both Sealing and Delivery must concurre and meete together, to make perfect Deeds.

I hope such as are present at the Sealing and Delivering of Deeds of Feoffament, and the State executing thereupon, will not forget to subscribe their names, or markes, as witnesses thereof, whereby they may the better be inabled to remember what therein hath beene done, if peradventure there shall be occasion to make use of them. And it is not amisse here before I end, to observe, that although upon Deeds of Feoffament, &c. it was not usuall before the latter end of *H.*8, or thereabouts to endorse or make mention upon such Deeds of the Sealing and Delivering of the Deeds, or state executing of the Lands, &c. intended thereby to be conveyed, (for I my selfe have many Deeds of Feoffament which doe testifie as much) yet it is to be credibly supposed, and not without some manifest probability, that such persons whose names are inserted after a

certaine

certaine clauſe in ſuch Deeds, beginning with *hiis teſtibus*, were eye-witneſſes of all. Thus deſiring you to take notice that I have called the ſaid ſix parts of the Feoffament formall, becauſe they are not abſolutely of the eſſence of Deeds,&c. *manebo in hoc gyro.* I will here conclude, Requeſting all thoſe to whom any ſight hereof ſhall, or may happen to come, friendly to admoniſh me of my faylings herein, whereby they ſhall ever engage me thankfull.

FINIS.